

No. 13746

United States
Court of Appeals
for the Ninth Circuit.

CHOW SING, by His Guardian ad Litem, CHOW
YIT QUONG,

Appellant,

vs.

HERBERT BROWNELL, JR., Attorney General
of the United States,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California
Southern Division.

FILED
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PAUL H. O'BRIEN

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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United States Attorney,
CHARLES ELMER COLLETT, ESQ.,
Assistant United States Attorney,
San Francisco, California,
Attorneys for Appellee.

In the United States District Court in and for the
Northern District of California, Southern Division

No. 30820

CHOW YIT QUONG, as Guardian Ad Litem for
CHOW SING,

Plaintiff,

vs.

J. HOWARD McGRATH, Attorney General of the
United States of America,

Defendant.

PETITION FOR DECLARATORY JUDGMENT
UNDER SECTION 503 OF THE NATIONALITY ACT OF 1940

Comes Now the plaintiff, Chow Sing, by his guardian ad litem, Chow Yit Quong, complains of the defendant and for cause alleges:

I.

For the purpose of this action, Chow Yit Quong was appointed by the above-entitled Court and now is the guardian ad litem of plaintiff, Chow Sing, minor.

II.

That the said plaintiff is the true and lawful blood son of Chow Yit Quong, a citizen of the United States; that as evidence of his United States citizenship, Chow Yit Quong holds Certificate of Identity No. 47426 issued September 12, 1923, by the Immigration Service at San Francisco, California;

III.

That the said plaintiff arrived at the Port of San Francisco, State of California, ex SS "President Wilson" on August 23, 1950, seeking admission as a citizen of the United States, such citizenship having been acquired under the provisions of Section 1993, Revised Statutes of the United States, as amended by the Act of May 24, 1934 and Section 201(g) of the Nationality Act of 1940 (8 U.S.C.A. 601(g));

IV.

That the defendant is the duly appointed and acting Attorney General of the United States; that the plaintiff applied to the Immigration and Naturalization Service at San Francisco, State of California, an official executive of the defendant herein, for recognition and admission to the United States as a citizen thereof; that the said Immigration and Naturalization Service at San Francisco, State of California, did on or about the 19th day of October, 1950, deny this plaintiff's application for admission and recognition as a United States citizen; that the Commissioner, Immigration and Naturalization Service, and the Board of Immigration Appeals, both of Washington, D. C., have affirmed said excluding decision; and that such plaintiff has exhausted his administrative remedies;

V.

That the said plaintiff is now and has been since the time of his arrival at the port of San Francisco, State of California on August 23, 1950, physically

present within the jurisdiction of this Court; and that said plaintiff claims permanent residence within the jurisdiction of this Court.

VI.

That this complaint is filed and these proceedings instituted against the defendant under Section 503 of the Nationality Act of 1940 (54 Stat. 1171, 1172; 8 USC 903) for a judgment declaring plaintiff to be a national of the United States;

VII.

That the said plaintiff has never committed any act nor executed any instrument of expatriation nor renounced his United States citizenship and is entitled to be declared a citizen of the United States;

Wherefore, plaintiff prays for judgment declaring him to be a national of the United States and for such other and further relief as may be just and proper.

JACKSON & HERTOGS,

/s/ JOSEPH S. HERTOGS,
Attorney for Plaintiff.

[Endorsed]: Filed August 17, 1951.

[Title of District Court and Cause]

ANSWER

Comes Now J. Howard McGrath, Attorney General of the United States of America, defendant in the above-entitled action, by and through his

attorneys, Chauncey Tramutolo, United States Attorney, and Edgar R. Bonsall, Assistant United States Attorney, and in answer to plaintiff's complaint, admits, denies and alleges as follows:

I.

Answering Paragraph I of the Complaint, defendant admits the allegations contained in Paragraph I of the Complaint.

II.

Answering Paragraph II of the Complaint, defendant affirmatively asserts that plaintiff is not the true and lawful blood son of Chow Yit Quong. Defendant has no knowledge, information or belief as to the other allegations contained in Paragraph II of the Complaint and therefore denies the same.

III.

Answering Paragraph III of the Complaint, defendant admits that plaintiff arrived at the Port of San Francisco, State of California, ex SS "President Wilson" on August 23, 1950, and applied for admission as a citizen of the United States. Defendant affirmatively asserts that plaintiff did not acquire United States nationality or citizenship under the provisions of Section 1993, Revised Statutes of the United States, as amended.

IV.

Answering Paragraph IV of the Complaint, defendant admits the allegations contained in Paragraph IV of the Complaint.

V.

Answering Paragraph V of the Complaint, defendant admits the allegations contained in Paragraph V of the Complaint.

VI.

Answering Paragraph VI of the Complaint defendant admits the allegations contained in Paragraph VI of the Complaint.

VII.

Answering Paragraph VII of the Complaint, defendant affirmatively asserts that plaintiff is not entitled to be declared as a citizen of the United States. Defendant has no knowledge, information or belief as to the other allegations contained in Paragraph VII and therefore denies the same.

Wherefore, defendant prays that each and every relief sought by the plaintiff be denied; that this Court declare a judgment in favor of the defendant that plaintiff has never been a citizen of the United States and that defendant receive his proper costs against the plaintiff in this action.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney,

/s/ EDGAR R. BONSTALL,
Assistant United States At-
torney,
Attorneys for Defendant.

[Endorsed]: Filed October 23, 1951.

[Title of District Court and Cause]

INTERROGATORIES TO ADVERSE PARTY

To: Chow Sing, Plaintiff, and his attorneys, Jackson and Hertogs, 550 Washington Street, San Francisco, California.

James P. McGranery, Attorney General of the United States, defendant above named, hereby requests that Chow Sing answer under oath in accordance with Rule 33 of the Federal Rules of Civil Procedure the following interrogatories.

1. Did you arrive at the Port of San Francisco, California on August 23, 1950?

2. Were you excluded from admission to the United States by a Board of Special Inquiry and was your appeal to the Commissioner of Immigration and to the Board of Immigration Appeals dismissed?

3. Did you appear and testify under oath before Immigration Officer A. W. Pauzon under dates of September 19, 1950, and September 20, 1950, at the Immigration Office in San Francisco, California?

4. Did Officer Pauzon, referred to in Interrogatory No. 3, propound the following questions and did you respond with the following answers?

Board of Special Inquiry

Exhibit 13

Page 1—

Q. Do you swear to tell the truth, the whole truth and nothing but the truth, So Help You God?

A. Yes.

Q. You are informed that if you wilfully and knowingly give false testimony at this proceeding you may be prosecuted for perjury, the penalty for which is imprisonment of not more than five years and a fine of not more than \$2000, or both. Do you understand? A. Yes.

Page 2—

Q. When was your father married the second time?

A. He was married on January 12, 1947 in Canton City.

Q. Where were you at the time your father got married? A. In Canton City.

Q. Were you present at the marriage feast?

A. Yes.

Q. When was the first time you saw your step-mother? A. At the day of their marriage.

Q. Where did their marriage take place?

A. At the Baptist Church in Tung Shan District of Canton City.

Q. At what address or what place did the marriage feast take place?

A. At the Dai Som Yuen Restaurant, the Bund, Canton City.

Q. How many tables were set for this feast?

A. About ten tables.

Q. What members of your family were present at this feast?

A. I was the only one besides my father who were members of my family that were present there.

Page 5—

Q. Were you present at the wedding?

A. I was in Canton City, but I didn't go to the wedding.

Q. Did you go to the wedding feast?

A. I did go to the wedding feast.

Q. Describe the wedding feast, where it was held, and who was present at the feast?

A. The wedding feast was held at the Dai Som Yuen Restaurant. There were about ten tables of guests present. Some were my father's friends and some were the friends of my stepmother and relatives of my stepmother. My stepmother's parents, her elder sister, her brother-in-law and her nieces and nephews also were present at the feast.

5. Concerning your residence, did Officer Pauzon, referred to in Interrogatory No. 3, propound the following questions and did you respond with the following answers?

Board of Special Inquiry—Exhibit 13

Page 3—

Q. At what other places have you ever lived and for what periods?

A. I was born in Canton City and lived there until I was 5 or 6 years old, or the time of the Japanese invasion of Canton City. Then I moved to Macao and lived there until the fall of Hong Kong to the Japanese, or when I was about 7 or 8 years old. I then went to Kweiyang City and lived there until December, 1946. I then returned to Canton City and lived there until July this year when I

went to Hong Kong to arrange for my coming to the United States.

Page 6—

Q. Did your father and stepmother make a trip back to the Quan Tong Po Village after their marriage? A. No.

Q. Did you return to the Quan Tong Po Village? A. I never have been back.

Q. When was the last time you were in Quan Tong Po Village?

A. I don't even remember that village.

6. Did you state to Officer Pauzon, referred to in Interrogatory No. 3, at the close of the hearing that you had understood the interpreter and all the questions asked you?

7. Did you testify under oath before a Board of Special Inquiry convened at the Immigration Office in San Francisco on the following dates: October 9, 1950, October 11, 1950 and October 19, 1950.

8. Did the chairman of the Board of Special Inquiry, referred to in Interrogatory No. 7 propound the following questions regarding the Quan Tong Po Village and did you respond with the following answers?

Board of Special Inquiry Transcript

Page 22—

Q. In what house did you, your father, and stepmother stay at Quan Tong Po Village in 1947?

A. It was about in the center of the village. I was only there for a few days. It was raining and I couldn't go out.

Q. Describe the Quan Tong Po Village as it was when you claim to have seen it in 1947.

A. It was raining and I couldn't go out. I don't know how many houses there were or how many rows of houses.

Q. How many days did you stay in Quan Tong Po Village in 1947? A. About ten days.

Q. If you were actually in Quan Tong Po Village for about ten days, you should be able to give us a fairly good idea of how that village was laid out. Will you state how many house in all you saw in that village in 1947?

A. Thirty odd houses.

Q. And you say that the house in which you, your father, and your stepmother lived in 1947 was about in the center of those 30 odd houses in Quan Tong Po Village?

A. It is not exactly in the center but it is near the center.

Q. Is that house near the front or the rear of the village?

A. I don't know which side was considered the front and which side was considered the rear of the village.

Page 23—

Q. Were there houses in front of, and to the rear of the house in which you, your father, and stepmother lived in Quan Tong Po Village when you were there in 1947? A. Yes.

Q. Were there houses on each side of the house in which you persons then stayed? A. Yes.

9. Did the chairman of the Board of Special

Inquiry, referred to in Interrogatory No. 7, propound the following questions regarding the sleeping arrangement and the serving of meals in your home in Quan Tong Po Village and did you respond with the following answers?

Board of Special Inquiry Transcript

Page 23—

Q. What were the sleeping arrangements in that house during the days you, your father and stepmother lived there in 1947?

A. My father and my stepmother slept in the bedroom of that house and I slept in the parlor.

Q. Did you sleep in the same house with your father and your stepmother each and every night while you folks stayed at Quan Tong Po Village in 1947?

A. Yes.

Q. Where did you folks have your meals during that period?

A. In the parlor of that house.

Q. Did you, your father and stepmother, while living at Quan Tong Po Village in 1947, eat all of your meals in the same house where the three of you slept each night?

A. Yes.

10. In reference to your relatives, did the Chairman of the Board of Special Inquiry, referred to in Interrogatory No. 7, propound the following questions and did you make the following answers?

Board of Special Inquiry Transcript

Page 23—

Q. Has your father any brothers or sisters?

A. My father has one brother; his name is Chow

Sang Quong who is now in the United States. He has no sisters.

Page 24—

Q. Have you ever seen Chow Sang Quong?

A. No.

Q. Is he married? A. Yes.

Q. What family has he?

A. I know that he has a wife and some children but I don't know how many children.

Q. Have you ever seen any of Chow Sang Quong's children? A. No.

Q. Do you know the names of any of them?

A. No.

11. In reference to the death of your alleged mother and sister, did the Chairman of the Board of Special Inquiry, referred to in Interrogatory No. 7, propound the following questions and did you respond with the following answers?

Board of Special Inquiry Transcript

Page 15—

Q. Describe your blood mother.

A. Her name was Wong Suey Hung; she died in Macao in CR 32 (1943).

Q. Were you living in Macao at the time of your mother's death? A. Yes.

Q. At what place in Macao did your mother die?

A. At 123 Fai Jee Gay Street, 2nd floor, Macao.

Q. What was the exact date of your mother's death?

A. She died in the 2nd month of CR 32 (1943) but I don't know whether it was the 2nd month according to Chinese or western reckoning.

Q. When did you move to Macao?

A. I don't know exactly when it was but it was about the time the Japanese occupied Canton City.

Page 16—

Q. What year was that?

A. I don't remember.

Q. When did you move away from Macao?

A. Sometime after my mother died I moved to Kweiyang.

Q. In what year did you move to Kweiyang?

A. About CR 32 (1943).

Q. Where is your mother buried?

A. She is now buried somewhere near the Quan Tong Po Village. My father moved her body from Macao to the place near Quan Tong Po Village during his last trip to China.

Q. Did your father tell you that he had done so?

A. Yes.

Page 17—

Q. You then stated that your sister, Chow Soo (So), had died in Macao in CR 32 (1943). What was the exact date of her death?

A. I don't remember.

Q. Did she die before or after your mother died?

A. She died after my mother.

Q. About how long after your mother died was it did your sister die?

A. I don't remember.

Q. Was it a matter of days, weeks or months?

A. It was at least about a month after my mother died.

Q. Where is your sister buried?

A. In Macao.

Q. Was her body ever removed to a place near Quan Tong Po Village?

A. I don't know. All I know is that my mother's body was removed from Macao to a place near Quan Tong Po Village.

12. In reference to your residence in Kweiyang City, did the Chairman of the Board of Special Inquiry, referred to in Interrogatory No. 7, propound the following questions and did you respond with the following answers?

Board of Special Inquiry Transcript

Page 21—

Q. What were the sleeping arrangements for you and your brothers during the three years approximately you claim to have resided in Kweiyang City?

A. My brothers and I usually occupied the middle building. Chow See Hong, his wife, their two sons and one daughter usually slept in the 3rd or rear building.

Q. Was the middle building which you and your brothers occupied partitioned off in any manner into separate rooms? A. No.

Q. Were the sleeping quarters occupied by you and your brothers at 58 Fat Yuen Road in Kweiyang City on the same level as the first building counting from the front of that address?

A. Yes, about the same level.

Q. While living at 58 Fat Yuen Road, Kweiyang

City, did you and your brothers ever sleep in a wooden loft at that address? A. No.

Q. Now, while your father was with you those few days in Kweiyang City, where did he sleep?

A. In the first building, I think. I don't remember for sure.

Q. If someone were to say that there was a wooden loft in the premises at 58 Fat Yuen Road, Kweiyang City, while you lived there, and that there were several rooms in that wooden loft, what would you say?

A. I would say there are none.

13. Do you have a certificate of birth?

14. Do you have a transcript of your school records?

15. Do you have any old correspondence between your alleged father and yourself?

16. Do you have a Canton City ration card?

17. Do you have a Hong Kong identification card?

18. Do you have any photographs of yourself taken with any members of your family?

19. Do you have any documentary evidence whatsoever which would tend to establish the relationship claimed?

20. Do you intend to present any witnesses other than your alleged father at the time of the trial?

21. If so, what are the names, addresses and relationship, if any, to yourself?

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney,

/s/ CHARLES ELMER COLLETT,
Assistant United States At-
torney,
Attorneys for Defendant.

[Endorsed]: Filed November 13, 1952.

[Title of District Court and Cause]

ANSWERS TO INTERROGATORIES

To James P. McGranery, Attorney General of the United States, defendant, and his attorneys, Chauncey Tramutolo, United States Attorney, and Charles Elmer Collett, Assistant United States Attorney, Post Office Building, Seventh and Mission Streets, San Francisco, California:

City and County of San Francisco,
State of California—ss.

Chow Sing, having been duly sworn, makes the following answers to interrogatories propounded to him by the defendant in the above-entitled case.

Answer to Interrogatory Number Three: "Yes."

Answer to Interrogatory Number Four: "Yes."

Answer to Interrogatory Number Five: "Yes as to page 3; No as to page 6."

Answer to Interrogatory Number Six: "No."

Answer to Interrogatory Number Seven: "Yes."

Answer to Interrogatory Number Eight: "Yes, except I did not state the village had 'thirty odd houses.' "

Answer to Interrogatory Number Nine: "Yes."

Answer to Interrogatory Number Ten: "Yes."

Answer to Interrogatory Number Eleven: "Yes."

Answer to Interrogatory Number Twelve: "Yes."

Answer to Interrogatory Number Thirteen: "No."

Answer to Interrogatory Number Fifteen: "Only one letter written after my arrival at San Francisco."

Answer to Interrogatory Number Eighteen: "Yes."

Answer to Interrogatory Number Nineteen: "Yes."

Answer to Interrogatory Number Twenty: "Yes."

Answer to Interrogatory Number Twenty-one: "Without binding myself to their appearance at time of trial, the following, So Tak, his wife, Susanville, California, no relation, Chow Sam, brother, San Francisco."

Dated: December 5, 1952.

/s/ CHOW SING.

Subscribed and sworn to before me this 5th day of December, 1952.

[Seal] /s/ L. RUTH WILBUR,
Notary Public, in and for the City and County of
San Francisco, State of California.

My commission expires February 8, 1953.

[Endorsed]: Filed December 5, 1952.

[Title of District Court and Cause]

ANSWERS TO INTERROGATORIES

To James P. McGranery, as Attorney General of the United States, and Chauncey Tramutolo, United States Attorney, and Charles Elmer Collett, Assistant United States Attorney, his counsel:

City and County of San Francisco,
State of California—ss.

Chow Yit Quong, having been duly sworn, makes the following answers as Guardian ad Litem for Chow Sing to interrogatories propounded to the said Chow Sing by the defendant in the above-entitled case.

Answer to Interrogatory Number Fourteen: "Transcript of the school records of Chow Sing were given to the Immigration and Naturalization Service and are not now in my possession."

Answer to Interrogatory Number Sixteen: "I had

a Canton City ration card which had to be surrendered at the time of my departure.”

Answer to Interrogatory Number Seventeen: “No.”

Dated: November 24, 1952.

CHOW YIT QUONG,
As Guardian ad Litem for
Chow Sing.

[Endorsed]: Filed November 26, 1952.

[Title of District Court and Cause]

ORDER FOR JUDGMENT

The evidence presented by plaintiff does not conform to the standards fixed in *Ly Shew vs. Acheson*, #30159 and #31161, this day decided.

Hence judgment granting plaintiff's prayer is not warranted.

Judgment will go for defendant upon findings to be presented pursuant to the Rules.

Dated: January 12, 1953.

/s/ LOUIS GOODMAN,
United States District Judge.

[Endorsed]: Filed January 12, 1953.

[Title of District Court and Cause]

ORDER SUBSTITUTING
PARTY DEFENDANT

The motion for substitution of party defendant in this cause coming on to be heard before the Court, and the Court being fully advised in the premises, and it appearing that the defendant, James P. McGranery, Attorney General of the United States, has been replaced by Herbert Brownell, Jr., as Attorney General, it is by the Court this 17th day of February, 1953,

Ordered, that Herbert Brownell, Jr., as Attorney General, be and he is hereby substituted as party defendant in this cause in the place and stead of James P. McGranery, at Attorney General.

/s/ LOUIS GOODMAN,

Judge of the District Court.

[Endorsed]: Filed February 17, 1953.

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above-entitled action came on for trial on the 8th and 9th days of December, 1952, before the above-entitled Court, Honorable Louis E. Goodman presiding, Joseph S. Hertogs, Esq., appearing as attorney for the plaintiff above named, and Chauncey Tramutolo, Esq., United States Attorney for the Northern District of California, and Charles Elmer Collett, Assistant United States Attorney for

said District, appearing as attorneys for the defendant above named, and the evidence having been received and the Court having fully considered the same, hereby makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

I.

It is not true that the permanent residence and domicile of the person who claims to be plaintiff Chow Sing is within the Northern District of California, or in the United States of America.

II.

The person who claims to be plaintiff Chow Sing has failed to introduce evidence of sufficient clarity to satisfy or convince this Court that Chow Yit Quong is the natural blood father of the person known as Chow Sing, or that the person who appeared before the Court claiming to be plaintiff Chow Sing is in truth and in fact Chow Sing.

Conclusions of Law

The person appearing before the Court as plaintiff in this action is not entitled to the relief prayed for.

Let judgment be entered accordingly.

Dated: February 17, 1953.

/s/ LOUIS GOODMAN,

United States District Judge.

Lodged January 26, 1953.

[Endorsed]: Filed February 18, 1953.

In the United States District Court for the Northern District of California, Southern Division

No. 30820

CHOW YET QUONG, as Guardian ad Litem for
CHOW SING,

Plaintiff,

vs.

JAMES P. McGRANERY, Attorney General of
the United States,

Defendant.

JUDGMENT

The above-entitled action came on for trial on the 8th and 9th days of December, 1952, before the above-entitled court, Honorable Louis E. Goodman presiding, Joseph S. Hertogs, Esq., appearing as attorney for the plaintiff above named, and Chauncey Tramutolo, Esq., United States Attorney for the Northern District of California, and Charles Elmer Collett, Esq., Assistant United States Attorney for said district, appearing as attorneys for the defendant above named; the evidence having been received, the court having fully considered the same, and having filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

I.

That the relief sought by the plaintiff, Chow Sing, be and the same is denied.

II.

That the defendant recover costs in this action
in the sum of \$.....

So Ordered.

Dated: February 17, 1953.

/s/ LOUIS GOODMAN,
United States District Judge.

Lodged January 26, 1953.

[Endorsed]: Filed February 18, 1953.

Entered February 19, 1953.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given this 25th day of February, 1953, that Chow Sing hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of this Court entered on the 17th day of February, 1953, in favor of the defendant and against the said Chow Sing, plaintiff.

JACKSON & HERTOGS,
Attorneys for Plaintiff.

By /s/ JOSEPH S. HERTOGS.

[Endorsed]: Filed February 26, 1953.

In the District Court of the United States for the
Northern District of California, Southern Division

No. 30820

CHOW YIT QUONG,

Plaintiff,

vs.

HOWARD J. McGRATH, Etc.,

Defendant.

Before: Hon. Louis E. Goodman, Judge.

REPORTER'S TRANSCRIPT

Appearances:

For the Plaintiff:

JOSEPH S. HERTOGS, ESQ.

For Defendant:

ARLIN W. HARGREAVES, ESQ.

Monday, December 8, 1952, 10:00 A. M.

The Clerk: Chow Yit Quong vs. McGrath, court trial.

Mr. Hertogs: Ready your Honor.

The Clerk: Will respective counsel please state their appearances for the record?

Mr. Hertogs: Joseph S. Hertogs for the plaintiff.

Mr. Hargreaves: Arlin W. Hargreaves for the

defendant. I might state at this time, your Honor, this is the first time I have ever appeared as counsel. I am admitted to practice in this court and I have received authorization to appear on behalf of the Government.

The Court: You are not admitted?

Mr. Hargreaves: I am admitted.

The Court: I see.

Mr. Hertogs: There is no objection, your Honor.

The Court: All right.

Mr. Hertogs: If the Court please, I will keep the opening statement rather brief, because I know the Court is very familiar with these declaratory judgment suits filed under Section 503 of the Nationality Act of 1940.

This is a suit by the plaintiff, Chow Seng, by and through his guardian ad litem, Chow Yit Quong, seeking a declaratory judgment of United States citizenship. The citizenship of Chow Yit Quong, father of the plaintiff, is acknowledged and he [2*] has been previously admitted to the United States on numerous occasions as a citizen thereof. The sole question and issue before the Court is the question of whether the plaintiff, Chow Seng, is the lawful blood son of Chow Yit Quong, who is a recognized United States citizen, who resided in the United States prior to the birth of this plaintiff.

The father originally came to the United States prior to the birth of the plaintiff and made a trip to China, returned to the United States, his second trip to China—during the course of the second trip

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

it is said that the plaintiff, Chow Seng, was born in Canton City, China. The plaintiff's birth was given to the Immigration and Naturalization Service upon the occasion of his examination at the time of his return from China in 1939. Shortly thereafter, in late 1939, Chow Yit Quong again made a trip to China at which time he obtained from the Immigration and Naturalization Service, prior to his departure, a returned citizen's form which we identify as form No. 430. At the time of securing this form, he also advised the Immigration and Naturalization Service that he had a child by the name of Chow Seng residing in China at that time.

Upon the occasion of his return from China in 1940, the same allegations were made. The father made a trip again to China in 1946 to bring this plaintiff to the United States and it was not until 1950 that he was successful in bringing him, and at that time the boy arrived at the port of San Francisco [3] and was excluded by the Immigration and Naturalization Service.

The decision of the local board of special inquiry was affirmed by the Commissioner and by the Board of Immigration Appeals on an appeal, and from that decision this suit was instituted.

At the trial of this action——

The Court: This is a suit, though, under 503, is it?

Mr. Hertogs: It is a suit under 503, your Honor. We intend to produce and introduce as evidence in behalf of this boy certain documentary proof showing the consistency of the father's claim over a long

period of years. We are going to have the father testify, the boy testify, the prior——

The Court: The what?

Mr. Hertogs: The prior landed son, who is a recognized citizen.

The Court: Oh, the prior landed son?

Mr. Hertogs: Prior landed son, yes, your Honor. And another witness, who saw the boy living with the boy in China during his last trip to China.

Mr. Hargreaves: Counsel has already set forth the statute under which this action is being brought. However, I would like to distinguish that this action is a little different than the ones that are naming defendant Acheson as a party. This one is naming McGranery and there has been a full and complete administrative hearing by a board of special inquiry which [4] found that the plaintiff was an alien and not a citizen of the United States. We wonder just exactly what does this mean, that they have found him to be an alien? If we bring it down to its substance, we find that he is attempting to enter the United States by fraud, and he is attempting to have this Court assist him to commit a felony. That is, as I say, if the finding of the board is correct. And I am sure your Honor is quite familiar with this type of case. I have been here in the courtroom many times when you have delved into them. In the past there has come up the question as to what proof is necessary. The burden of proof, of course, I believe, is conceded to be with the plaintiff, and we come up with the question what evidence must be presented to meet

this burden of proof. And considering the question, I believe we should take into consideration two presumptions.

In the past the courts have established a rule that a person coming from a foreign country speaking a foreign tongue, exhibiting their manners and traits,—that such a person is himself an exhibit. And it is presumed that he is an alien and not a citizen of the United States. I submit, your Honor, that this is not an empty or a weak presumption. It is something that must be met with and overcome by counsel for the plaintiff. This same presumption has been stated at various times by the Ninth Circuit Court of Appeals. In the past various counsel have alleged that this presumption only arose [5] due to the Chinese exclusion laws; however, when we come down and consider the cases, we find the presumption arose because of the person himself, his manners and traits, and not because the statute incorporated the same presumption in statute form.

Another presumption is created by a distinction which has seldom been referred to under the Constitution of the United States. There are only two types of citizens, those born in the United States and those who acquire citizenship through some form of naturalization. This principle has been recognized repeatedly by the courts, including the Supreme Court of the United States. I might refer your Honor to the case of *Elk vs. Wilkinson*, 112 US 94, and the case of *Wong Kim Ark*, 169 US 649. The principles are also set forth in the *Zimmer vs. Acheson*, 191 Fed. 2nd 209.

The plaintiff alleges birth in China and he must therefore have derived his citizenship, if at all, through some form of naturalization. Of course we consider this as a form called "derivative." But it is a grant from Congress and not something he derived by way of the Constitution. If he was coming before the Court and alleging a judicial naturalization, it would be incumbent upon him to produce the actual court record. The fact that he claims a form of naturalization through relationship does not lessen his burden to produce clear and convincing evidence of the facts upon which that naturalization could take place. In other words, your Honor, the plaintiff [6] must be considered an alien until he proves his form of naturalization.

Concluding this little opening statement, your Honor, I would like to mention that as a general rule, it is impossible for the Government to make any type of investigation in China, and the actual proof of fraud is beyond the scope of the Government in most of the cases. We can only hope, if this actually is fraud, or if there is actually fraud in such a case, to, in questioning the witnesses, break down their story. Now this has been done by the administrative procedure, they have found him to be an alien, and we will now submit the evidence to the Court.

Mr. Hertogs: At this time, your Honor, I would like to take exception to the opening statement of counsel for the defendant. In the first place, there is lot of reference in that concerning the administrative hearing and the presumption arising out of

the administrative hearing and the inferences had as to fraud in this particular case. Now I believe the Court is well aware of the recent decision of the Court of Appeals for the Ninth Circuit, the case of Wong Wing Soo vs. McGrath, 196 Fed. 2nd 120.

The Court: Well, you needn't labor that point. This is a proceeding de novo.

Mr. Hertogs: That's right, your Honor; it is not a question of review of an administrative procedure. In addition, [7] your Honor, I question the statement made by counsel concerning this boy being a naturalized United States citizen. He is not a naturalized citizen, he is a natural born United States citizen. That question has been determined by the Courts.

The reason I think it has, before the first act which provided by specific language for acquisition of citizenship of a foreign born child, in 1855, a foreign born child was recognized as a citizen of the United States under the common law rule of *jus sanguinis*.

The Court: I think that that perhaps was what Mr. Hargreaves really meant, that the only persons with whom the Constitution recognizes itself as citizens of the United States are those who were born here, and then they left it to Congress, the Constitution left it to Congress to determine what other persons could be citizens.

Mr. Hertogs: Yes, they are natural born; they are not naturalized citizens, your Honor, because Section 201 of the Nationality Act of 1940 is rather specific in that regard, because Section 201 has a

definition of citizens, and where it refers to a naturalized citizen, it states that a naturalized citizen is a person who acquires his United States citizenship at a time subsequent to birth.

Now the statute in effect specifically provide that if the relationship exists and if the father had prior residence in the United States, that that is a person who shall be a United [8] States citizen at the time of birth, and that "at birth" is in the statute itself.

The Court: Well, I think probably the distinction is that the persons who were recognized, who are declared constitutionally to be citizens of the United States, are those who are born here, and then by the Constitution Congress was empowered to make such laws in that regard as it may see fit, and Congress has passed certain statutes over the years which have determined who shall and who shall not be citizens and how they shall become citizens and how they shall lose their citizenship and so forth.

Mr. Hertogs: That's correct, your Honor.

As the first witness I would like to call Chow Yit Quong. [9]

The Court: Are there going to be interpreters?

Mr. Hertogs: Yes, I have Richard Fong, the official Superior Court interpreter, your Honor.

The Court: Has the new Attorney General been substituted in this action?

Mr. Hertogs: Yes, he has, your Honor.

(Whereupon Richard Fong was duly sworn to act as interpreter from the English language to the Chinese and vice versa in the above-entitled cause.)

The Clerk: Will you please state your name, sir?

The Interpreter: Fung—Richard Fong.

CHOW YIT QUONG

called on behalf of the Government, sworn through the interpreter.

The Interpreter: The answer is, "I do."

Mr. Hargreaves: If the Court please, I wonder if Chow Yit Quong is supposed to be in the United States 25 years,—I wonder if he couldn't speak English.

Mr. Hertogs: Well, your Honor, I might say this. He does understand and he can speak English; I believe we could probably get by with it, but I am told some of the discrepancies that arose during the original hearing were caused by using the English language at various times rather than using Chinese. I would prefer if possible to use an interpreter. [10] If the Court wants to try examination in English, that's agreeable with counsel.

The Court: Well, how long have you lived in the United States?

The Witness: United States——

Mr. Hertogs: Mr. Chow,——

The Court: That is an easy question.

Mr. Hertogs: ——try and talk in English to the Court, will you please?

(Testimony of Chow Yit Quong.)

The Court: That is easy question. How long you live in United States?

The Witness: In 1923 I come from China.

The Court: All right. And what is your business?

The Witness: Business, before working in shipyard.

The Court: What you do now?

The Witness: And in welding.

The Court: Are you a welder now?

The Witness: Yes.

The Court: Where you work?

The Witness: Before I work in Richmond No. 1 shipyard.

The Court: Where you work now?

The Witness: Now billing in Mark Hopkins Hotel, house work.

The Court: You do house work in Mark Hopkins Hotel? All right. And how old are you? [11]

The Witness: In '53—how old I am?

The Court: Where you lived?

The Witness: I lived in Montgomery Street, 30 Montgomery Street.

The Court: That is Montgomery Street?

The Witness: In 628, alone, before nineteen—

The Court: Who you live with?

The Witness: With—

The Court: You live alone or you live with somebody else?

The Witness: I don't understand.

Mr. Hertogs: Who lives with you?

(Testimony of Chow Yit Quong.)

The Witness: Who?

The Court: Who lives with you?

The Witness: Who—in house?

The Court: Yes, who lives with you in house?

The Witness: House—I no understand.

The Court: You married?

The Witness: Yes, I married.

The Court: Your wife here?

The Witness: No, wife in China.

The Court: Who lives with you, anybody, or you live alone?

The Witness: No, I live, at my son here.

The Court: You live with son?

The Witness: Yes, he my son. [12]

The Court: Anybody else? You live with anybody else besides your son?

The Witness: Is my son, is Chow Seng, is Chow Sam, he is here, he is my son, Chow Shom, Chow Shom he in other side.

The Court: Well on Montgomery Street where you live, you live on one room?

The Witness: Yes, one room, Montgomery Street, one room and my son in one room.

The Court: Your son lives same room with you?

The Witness: Yes, Chow Seng.

The Court: Mr. Interpreter, have you talked with this witness before?

The Interpreter: No.

The Court: Are you able to tell what dialect he speaks or what dialect are you going to interpret to him in?

(Testimony of Chow Yit Quong.)

The Interpreter: I presume in the Cantonese dialect.

The Court: Well, will you find out before we proceed what dialect you are going to speak with him in?

(Conversation between witness and interpreter not understood by reporter.)

The Interpreter: I can speak the Cantonese dialect.

The Court: And has he said enough so that you think that you can interpret in the Cantonese dialect?

The Interpreter: Yes, I am sure.

The Court: All right. [13]

The Clerk: Mr. Interpreter, will you please have the witness state his full name for the record?

A. (Through interpreter): Chow Yit Quong.

Mr. Hertogs: It is stipulated, your Honor, that Chow Yit Quong is a citizen of the United States.

Mr. Hargreaves: Yes.

The Court: Very well. How did he acquire his citizenship?

Mr. Hertogs: Through his father, your Honor; the father still lives in the United States, resides in——

The Court: The father was born in the United States?

Mr. Hertogs: Yes, I believe so.

(Answers given through interpreter except as otherwise indicated.)

(Testimony of Chow Yit Quong.)

Direct Examination

By Mr. Hertogs:

Q. Father born in United States?

A. Father born in United States, my father. (In English).

The Interpreter: "Yes, he was."

Mr. Hertogs: He lives in San Mateo, your Honor.

The Court: And where was the plaintiff—you were going to develop where he was born?

Mr. Hertogs: I wasn't, your Honor.

The Court: Let's get that for the record.

The Witness (In English): I born in China.

Q. (By Mr. Hertogs): And when did you first come to the [14] United States?

A. In 1923.

Q. Now subsequent to your arrival in the United States in 1923, when did you first make a trip to China?

A. I have forgotten the exact date.

Q. What year?

A. I think it was in 1926.

Q. And how long did you stay in China on that trip?

A. Less than a year.

Q. And did you make another trip to China?

A. I have forgotten the date of the second trip.

Q. Approximately what year did you start?

A. No, I can't recall what year it was.

Mr. Hargreaves: If it will assist counsel, I will stipulate he departed in 1932.

(Testimony of Chow Yit Quong.)

Mr. Hertogs: I was going to ask counsel to stipulate, your Honor. I believe the record will disclose that, the official records will disclose that Chow Yit Quong first arrived and was admitted on June 30, 1923, at San Francisco; that he departed from San Francisco August 21, 1926, returned to San Francisco on March 6th, 1928; that he next departed from San Francisco on August 12, 1932, that he returned through the Port of San Francisco on March 11, 1939; that he next departed from San Francisco—pardon me, he returned at Los Angeles in 1939. That he next departed from the United [15] States from the Port of San Francisco November 17, 1939, returned through San Francisco on November 7, 1940; departed again on December 12, 1946, returned again on August 31, 1950. Is that correct?

Mr. Hargreaves: Correct.

Q. (By Mr. Hertogs): How many times have you been married? A. Twice.

Q. When were you married the first time?

A. The sixth year of the Chinese Republic.

Mr. Hertogs: That is 1917, your Honor.

Q. (By Mr. Hertogs): That was prior to your original admission to the United States?

A. Yes.

Q. And at the time of your admission to the United States in 1923, did you advise the Immigration and Naturalization Service that you were married at that time? A. Yes, I did.

Q. And what was the name of your wife?

(Testimony of Chow Yit Quong.)

A. Her name is Wong Suey Hong.

Q. And is Wong——

The Court: First wife?

Mr. Hertogs: That is the first wife.

Q. (By Mr. Hertogs): And is Wong Suey Hong still living? A. No, she died.

Q. And when did she die? [16]

A. She died in 1943.

Q. Now at the time of your departure for China in 1926, did you obtain a citizen's return certificate from the Immigration and Naturalization Service?

Mr. Hargreaves: I don't believe that is material, counsel. We have stipulated he was a citizen.

Mr. Hertogs: Yes, but I want to go into some other matters, your Honor, concerning the questions and answers that were asked and propounded by the Immigration and Naturalization Service at that time.

The Court: All right.

A. Yes, I did.

Q. (By Mr. Hertogs): And before you obtained this certificate from the Immigration and Naturalization Service, were you examined at great length concerning your family history?

A. Yes, they did.

Q. Now at the time of your return from China in 1929, did you fill and file a form with the Immigration and Naturalization Service indicating the members of your family then in China?

The Court: 1928, wasn't it? You said '29.

Mr. Hertogs: '28, was it?

(Testimony of Chow Yit Quong.)

The Court: You said '28 and now you said '29.

Mr. Hertogs: 1928.

Mr. Hargreaves: I believe I will object to that, your [17] Honor, on the ground that the witness can now testify as to the members of his family, and it would be a self-serving statement, prior statements, consistent statements, and the witness himself can testify as to what members of the family he has.

The Court: Generally speaking I think that objection is good, Mr. Hertogs. The proof does not lie in what he tells someone, the proof lies in his testimony as to the fact.

Mr. Hertogs: Yes, sir.

The Court: It would be time enough to meet that issue if it was sought to be shown that he made some inconsistent statement.

Mr. Hertogs: That is true, your Honor, but what we intend to show is the consistency over some 25 years of the claims of the various members of his family.

The Court: Well, wouldn't it be time enough to reach that if it were claimed that he had at some time or other made statements that were inconsistent or contrary as to the fact that he seeks to establish? In other words, I am not called upon to try here as a part of plaintiff's case what he said from time to time.

Mr. Hertogs: No.

The Court: But rather what the facts are that

(Testimony of Chow Yit Quong.)

involve the citizenship of his son. I think it would unduly prolong the direct examination. [18]

Mr. Hertogs: I will limit my questions at this time, then, your Honor. Withdraw that question.

Q. (By Mr. Hertogs): During the course of your trip to China between 1932 and 1939, did you have any children born in China?

A. Yes, I have.

Q. And what were the names of those children?

A. My oldest, eldest son is named Chow Bow.

Q. When was he born?

A. He was born the 17th year of the Chinese Republic.

Q. 17th year?

A. All I can remember is their names but not the dates of their births.

Q. What year was he born?

The Interpreter: He is referring to Chow Bow now.

A. Now I can tell you the exact date.

Q. How old is Chow Bow today?

A. I think he is 34 now.

Q. Was he born before you came to the United States? A. Yes.

Q. Now I am interested in those children that were born during your trips to China between 1932 and 1939.

A. My second son is named Chow Fat.

Q. How old is Chow Fat?

A. He was born a year later than Chow [19]
Bow.

(Testimony of Chow Yit Quong.)

Q. Well, was he born before you came to the United States? A. That's correct.

Q. Now I am not interested in those boys that were born before you came to the United States or during your first trip to China. I want only the names of your children that were born during your trip between 1932 and 1939.

A. My third son is named Chow Shom. (Chow Sam).

Q. When was he born?

A. Why I have forgotten the date of his birth.

Q. How old is he? A. He is 29 this year.

Q. And was he ever admitted to the United States?

A. Yes, he is here right now in the courtroom.

Q. He is in the courtroom today?

A. Yes (indicating), that's him.

Q. Which one? A. The one on my right.

Q. Sitting in the back of the room?

A. Chow Shom. (Chow Sam).

(Person stood in body of the courtroom.)

Q. (By Mr. Hertogs): Now who was your next child? A. Chow Hing.

Q. And how old is Chow Hing?

A. I know is over 20 years old, but I have forgotten how old he is. He was in the army and he is in Los Angeles now. [20]

Q. Who is your next child?

A. The next one is named Chow Wing.

Q. And when was he born?

(Testimony of Chow Yit Quong.)

A. Now I have forgotten the date of his birth.

Q. How old is Chow Wing.

A. He is 25 this year.

Q. That is 25, Chinese reckoning?

A. Chinese reckoning.

Q. And who is your next son?

A. That is Chow Seng, the one who is sitting in here today?

Q. Is he in the courtroom now?

A. Yes, that's him. (Indicating.)

Q. Sitting in the front of the courtroom. Now where was he born?

A. He was born August the 23rd, 1934.

Q. Where was he born?

A. In Canton City, China.

Q. Were you there at the time of his birth?

A. Yes, I was in China.

Q. And were you present at the time of his birth? A. Yes, I was present.

Q. And how long did you stay in China subsequent to his birth? A. About seven years.

Q. Now who was your next child?

A. Her name is Chow Suey, a daughter. [21]

Q. And when was she born?

A. A year after his birth.

Q. Now you have testified that you were married twice. When were you married the second time?

A. I married a second time January 11, 1951.

Q. In what year?

(Testimony of Chow Yit Quong.)

A. No, I was wrong on the first statement. I was married January 11, 1947.

Q. Where were you married?

A. In Canton City.

Q. And what was the name of your second wife?

A. Her name is Yee So Han.

Q. And where does she reside now?

A. In Canton City.

Q. You made the last trip to China, then, from December, 1946, to August, 1950, is that correct?

The Court: You already read from the record that it said he was in China from 1946 to 1950.

Mr. Hertogs: Yes, your Honor.

The Court: Is that right?

Mr. Hertogs: That is correct. I want him—because he made the mistake of saying '51, your Honor, once. It couldn't be.

A. That's correct.

Q. (By Mr. Hertogs): During your residence in China from [22] early 1947 to 1950, did you live with Chow Seng?

A. Yes, that's right, up to the present time.

The Court: Well, no, the question was whether or not you lived in China with the boy Chow Seng between 1947 and 1950.

Mr. Hertogs: That's correct.

The Court: That was the question. Are you having any difficulty with the witness as to dialect?

The Interpreter: No, the dialect.

The Court: Or is it his own mental ability that you have difficulty with in answering?

(Testimony of Chow Yit Quong.)

The Interpreter: Yes, it is mental ability. He is not giving me a direct answer, so I have to explain the question to him.

The Court: It is not a question of inability to understand one another in the dialect; it is his manner of answering?

The Interpreter: Yes, that's correct.

The Court: All right.

Mr. Hertogs: At this time, your Honor——

The Court: What is his manner of answering the questions?

The Interpreter: He is giving me an answer in a different form.

The Court: That do not conform?

The Interpreter: No, in a different form, not directly. [23]

The Court: You mean that in his answers he talks about something else?

The Interpreter: Something else, and then lead back to the answer.

The Court: Is that generally true? Have you had that difficulty right along now or only in some questions?

The Interpreter: In some questions.

The Court: All right, go ahead.

Mr. Hertogs: At this time, your Honor, I would like to have this picture of five individuals marked at Plaintiff's No. 1 for identification.

The Clerk: Plaintiff's Exhibit 1 marked for identification.

(Testimony of Chow Yit Quong.)

(Whereupon photograph referred to above was marked Plaintiff's Exhibit No. 1 for identification only.)

Q. (By Mr. Hertogs): I will show you Plaintiff's Exhibit No. 1 for identification and ask you if you have seen this photograph before?

A. Yes, I have seen it.

Q. Now when did you see it before?

A. That picture was taken while I was in China.

Q. Are you in this picture?

A. Yes, that's me.

Q. Did you have this picture taken?

A. Yes, I did. [24]

Mr. Hargreaves: Will you specify what trip that was, counsel?

Q. (By Mr. Hertogs): When did you have this picture taken?

A. It was taken in January of 1947, I think.

Q. January of 1947?

A. Yes, around there.

Q. Where were you living in January——

A. (Interrupting): No, it was taken in 1950.

Mr. Hertogs: Call the Court's attention that this has a date right on it.

Q. (By Mr. Hertogs): Will you please identify the persons who appear in that picture?

A. This is me.

Q. Which way are you reading?

The Interpreter: From right to left.

A. (Continuing): The next one is my son, Chow

(Testimony of Chow Yit Quong.)

Seng. The next one is a daughter of my friend, and I consider her my god-daughter. The next one is my wife.

The Court: That is the second wife?

A. (Continuing): And the small child is another son of mine.

Q. (By Mr. Hertogs): Now is that the first or second wife? A. My second wife.

Q. And is that woman the mother of the small child that appears in the picture?

A. Yes. [25]

Q. Now where was this picture taken?

A. In Canton City, China.

Q. Now why did you have this picture taken?

A. Well, I was about to leave for the United States, so I had the picture taken for remembrance.

Q. Who put the date on the bottom of the picture? A. I did. I wrote it down.

Mr. Hertogs: I ask it be admitted, your Honor.

The Court: It may be admitted.

The Clerk: Plaintiff's Exhibit 1 admitted into evidence.

(Whereupon Plaintiff's Exhibit No. 1 for identification only was received in evidence.)

Mr. Hertogs: I have a picture of two small persons I would like to have marked as Plaintiff's Exhibit next in order, your Honor, for identification. I have shown all these exhibits to counsel previously, your Honor.

(Testimony of Chow Yit Quong.)

The Clerk: Plaintiff's Exhibit 2 marked for identification.

(Whereupon photograph referred to above was marked Plaintiff's Exhibit No. 2 for identification only.)

Q. (By Mr. Hertogs): Ask you if you have seen this picture before, which is marked Plaintiff's Exhibit No. 2 for identification?

A. Yes, I have seen it.

Q. Who are they? [26]

Mr. Hargreaves: I will object, your Honor; the photograph is of a very small boy and a very small girl, and I don't believe there has been a proper foundation to show that he knows who those persons are.

The Court: Well, he is asking him who they are.

Mr. Hargreaves: I mean, my objection was, there hasn't been any foundation to show that he had any knowledge of who these people are.

Mr. Hertogs: Well, he can identify them.

The Court: That is what he is asking him.

Mr. Hertogs: I am asking if he can identify them.

A. Yes, I know them.

Q. (By Mr. Hertogs): Who are they?

A. The boy is my son and the girl is my daughter.

Q. What is the name of your son?

A. The son's name is Chow Seng.

Q. And who is the daughter?

(Testimony of Chow Yit Quong.)

A. The daughter's name is Chow Suey.

Q. How can you recognize them?

A. Well, they are my children, I ought to know.

Q. Now did you have this photograph in your possession?

A. Well, yes, I had this in my possession when I came back the last trip.

Q. Do you know when that photograph was taken? A. It was taken in 1938. [27]

Q. In what year? A. 1938.

Q. How old is the boy in that picture?

The Interpreter: You mean at the time of taking the picture?

Mr. Hertogs: Yes.

A. He was very small then.

Q. (By Mr. Hertogs): Were you in China at the time this picture was taken?

A. I had already returned to the United States.

Q. From which trip?

A. After my return on the second trip.

Q. What trip do you mean by "second trip"?

A. I have forgotten the dates.

Q. You have testified Chow Seng was born in 1934? A. Yes.

Q. Now you also testified that you came back from one trip to China in 1939?

A. Well, I don't think I can remember the dates.

Q. The records show that you made another trip to China in 1939 and returned in 1940; do you understand? A. Yes.

(Testimony of Chow Yit Quong.)

Q. Now from the time Chow Seng was born in 1934 to the time that you returned to the United States in the early part of 1939, did he live with you in China? [28]

A. Yes, I was living with him during all that time.

Q. You lived together? A. Yes.

Q. And who else lived with you at that time?

A. Well, my other sons were living with me then, Chow Bow and Chow Fat.

Q. Was Chow Sam and Chow Hing also living with you at that time?

A. Yes, they were there also.

Q. Now did you all live together in the same house? A. Yes.

Q. Did you have your meals together?

A. Yes.

Q. And everybody slept in the same house, is that correct? A. Yes, the same house.

Q. Now you have testified that your first wife was Wong Suey Hong, is that correct?

A. Yes.

Q. Was Wong Suey Hong the mother of Chow Seng? A. Yes.

Q. Did you and Wong Suey Hong treat Chow Seng as your son? A. Yes.

Q. Now who gave birth to Chow Seng?

A. Wong Suey Hong.

Q. And where was that? [29]

The Court: Where was the birth?

A. Canton City.

(Testimony of Chow Yit Quong.)

Q. (By Mr. Hertogs): And you were present at that time? A. Yes, I was.

Q. And had you and Wong Suey Hong been living together prior to that time as man and wife?

A. Yes.

Q. Now subsequent to that time you made another trip to China between 1939 and 1940, is that correct? A. Yes.

Q. Was Chow Seng living with you at that time? A. Yes.

Q. Did he live in the same house with you?

A. Yes.

Q. And he ate his meals with you?

A. Yes.

Q. And did the boy that you saw in China during this 1939 to 1940 trip look like the boy that you last saw in China when you left and returned to the United States in 1939?

A. Yes, it was the same person.

Q. When was the next time that you saw Chow Seng?

A. Well, the next trip when I went to China.

Q. Now when you went to China at that time and saw Chow Seng, did he look like the same boy that you saw when you left China and returned to the United States in 1940? [30] A. Yes.

Q. Is Chow Seng your lawful blood son?

A. Yes.

Q. Have you always claimed to have a son named Chow Seng? A. Yes.

Q. Now is this person who is now present in

(Testimony of Chow Yit Quong.)

court the same Chow Seng that you have consistently claimed throughout the years?

A. Yes.

Mr. Hertogs: I will ask that the 1942 income tax statement here be marked as Plaintiff's exhibit next in order, your Honor.

The Clerk: Plaintiff's Exhibit 3 marked for identification.

The Court: 1940 Income Tax Statement?

Mr. Hertogs: 1942, and 1943 as Plaintiff's next in order, your Honor, and then 1944 and 1945. The next one, certified copy to Selective Service questionnaire——

The Clerk: Plaintiff's Exhibits 4, 5, 6 and 7 marked for identification.

Mr. Hertogs: 3, 4, 5, 6 and 7.

(Whereupon documents identified above were thereupon marked Plaintiff's Exhibits 3, 4, 5, 6 and 7 for identification only.)

Q. (By Mr. Hertogs): I will show you Plaintiff's Exhibit No. [31] 3 for identification and ask you if you recognize this document.

A. Well, it is my income tax return.

Q. Did you file that income tax return with the Bureau of Internal Revenue in San Francisco for the year 1942?

A. Yes, I did.

Q. I will show you Plaintiff's Exhibit No. 4 for identification and ask you if you recognize that document.

A. This is also my income tax return.

(Testimony of Chow Yit Quong.)

Q. And did you file that with the Bureau of Internal Revenue for the fiscal year 1943?

A. Yes, I did.

Q. I will show you Plaintiff's Exhibit No. 5 for identification and ask you if you recognize that document.

A. This is also my income tax return.

Q. And did you file that with the Bureau of Internal Revenue at San Francisco for the fiscal year 1944?

A. Yes, I did.

Q. I will show you Plaintiff's Exhibit No. 6 for identification and ask you if you recognize that document?

A. This is also my income tax return.

Q. And did you file that with the Bureau of Internal Revenue at San Francisco for the fiscal year 1945?

A. Yes, I did.

Q. Now did you register for Selective Service in 1942? [32]

A. Yes, I did.

Q. I will show you Plaintiff's Exhibit No. 7 for identification and ask you if you recognize this document. I call your attention specifically to the signature at the bottom of page 7.

A. Yes, that is my signature.

Q. And did you file this Selective Service questionnaire with the Selective Service system in January of 1943?

A. Yes, I did.

Mr. Hertogs: I will ask these be introduced in evidence.

Mr. Hargreaves: May I ask counsel the purpose they are being introduced for?

(Testimony of Chow Yit Quong.)

Mr. Hertogs: To show the consistent claim of the son Chow Seng, your Honor.

Mr. Hargreaves: May I make the same objection as to the prior statement of the witness? He has a self-interest, and he claimed allotments for his children on the income tax, and also to show consistency with the immigration records, and it is an attempt to corroborate the witness' present testimony, and the documents are self-serving.

The Court: Well, the documents are self-serving, there is no doubt about that. It doesn't prove that that is the son, but let them be marked. The objection really is to the weight rather than——

Mr. Hertogs: That is correct, your Honor, it is a [33] question as to the weight rather than to the admissibility; and it is a little bit out of order of proof.

The Court: Let them be marked.

The Clerk: Plaintiff's Exhibits 3, 4, 5, 6, and 7 admitted into evidence.

(Whereupon Plaintiff's Exhibits 3, 4, 5, 6, and 7 for identification only were received in evidence.)

Mr. Hertogs: At this time, your Honor, I would like to make a request for the Government to produce the blood examinations that were conducted in this particular case in accordance with the Court's order.

Mr. Hargreaves: Counsel was furnished a copy.

(Testimony of Chow Yit Quong.)

Mr. Hertogs: I do not happen to have them. I don't know what I did with them.

Mr. Hargreaves: I will stipulate they are compatible.

The Court: The blood examinations of the witness and of the alleged son?

Mr. Hertogs: Yes, your Honor.

The Court: What do they show?

Mr. Hargreaves: Paternity was possible, your Honor.

The Court: They show the same blood—they show that the—what do they call it?

Mr. Hertogs: Compatibility. You have different groupings, your Honor.

The Court: The same group, or compatible—?

Mr. Hertogs: Compatible blood groupings, yes, your Honor. As long as the Government will stipulate to it—

The Court: Why encumber the record with it, then, if there is a stipulation on it?

Mr. Hertogs: We will not.

The Court: What do the examinations show, Mr. Hargreaves?

Mr. Hargreaves: If the Court please, the examination showed that paternity was possible under the blood grouping.

The Court: There were compatible blood groupings.

Mr. Hargreaves: That's right. Of course we only had just the witness. We didn't have the mother—so that the test is actually very limited.

(Testimony of Chow Yit Quong.)

The Court: It shows, though, as between father and alleged son, there was a compatible blood grouping?

Mr. Hargreaves: That's correct.

Mr. Hertogs: That is right, your Honor.

Q. (By Mr. Hertogs): Mr. Chow, you have identified this boy sitting in the first row as your son, Chow Seng, is that correct? A. Yes.

Q. Is this boy that is sitting in this courtroom the same person that was born to your wife in Canton City in 1934? A. Yes, that is correct.

Q. And how do you know that?

A. Oh, that is my own son. I ought to [35] know.

Q. Well, did you see him enough during the intervening years to clearly recognize him as your son? A. That is correct.

Mr. Hertogs: I have no further questions, your Honor.

The Court: Well, we will take a five-minute recess now.

(Recess.)

Cross-Examination

By Mr. Hargreaves:

Q. Mr. Chow, on Mr. Quong now—Chow Yit Quong, is that correct?

A. Yes, that is correct.

Q. Now is the family name——

The Interpreter: Chow is the family name.

(Testimony of Chow Yit Quong.)

Q. (By Mr. Hargreaves): You have previously testified here that you were in China from 1934 until 1939; is that correct? A. Yes.

Q. You also testified you were in China from November, 1939, until December, 1940, is that correct? A. Yes, that's correct.

Q. Where were you living in China during those years?

A. Between the years 1934 and 1939 I was living in Canton City for a while and then we moved back to the village.

Q. Did you also reside part of the time in Macao? A. Yes.

Q. During all those years in which you resided in Canton City and Macao, in which there was an American Consul, did [36] you ever register the birth of the plaintiff? A. No, I did not.

Q. Why didn't you?

A. Well, when I was in Macao I didn't know there was an American Consulate there.

Q. Did you know there was an American Consul in Canton City?

A. Yes, I know there was a consulate there, but I didn't register with him.

Q. Isn't it a fact that you went to the consul in Macao in order to clear to come to the United States in 1940? A. Yes.

Q. Then you did know there was a consul in Macao?

A. No, I didn't went to the Macao American

(Testimony of Chow Yit Quong.)

Consulate. It was the Hong Kong Consulate and I went to get clearance.

Q. Where did you clear your other sons which you brought to the United States?

A. With the Hong Kong Consulate.

Q. Did you at that time register the birth of the plaintiff?

A. When he asked me how many sons I have, I did mention that I had a son by the name of Chow Seng.

Q. Did he——

The Court: That was not the question that he asked. He asked him whether he registered.

(Reinterpreted.)

A. Well, he asked me and I told him. [37]

Q. (By Mr. Hargreaves): Did you fill out a form? A. He didn't give me any paper.

Q. How many sons do you have?

A. Nine sons.

Q. How many daughters do you have?

A. One daughter.

Q. Is she alive? A. She died.

Q. Then your only children living are nine sons, is that correct? A. Yes, nine.

Q. Out of those nine sons can you give the birthdate of one other than the plaintiff?

The Interpreter: I am afraid I didn't understand.

Q. (By Mr. Hargreaves): Can you give the birthdate of any of your sons other than the plain-

(Testimony of Chow Yit Quong.)

tiff? A. I can remember the youngest one.

Q. What is it?

A. The youngest one is Chow Ting. He was born August 31, 1948, in Hong Kong.

Q. Is that year 1948 correct?

(Document produced by witness.)

Mr. Hargreaves: I will have to ask the witness to testify from memory.

Mr. Hargreaves: Is the year 1948 correct? [38]

The Court: Tell him not to look at the paper.

(Interpreted to witness.)

A. Well, I think it was August 31, 1950.

Q. (By Mr. Hargreaves): You are not sure, is that correct? A. I think it was about then.

Q. Who accompanied——

The Court: You are having some difficulty in——

The Interpreter: No, he is not. I understand him perfectly, but he is not giving me a direct answer.

The Court: For instance, when you asked him the question as to what was the date the youngest son was born, what sort of an answer did he give you?

The Interpreter: Well, at first he told me it was 1948 and afterwards he tells me it is 1950.

The Court: Well, when you asked him if he could remember the date of birth of any of his children except Chow Seng, what sort of an answer did he give you?

(Testimony of Chow Yit Quong.)

The Interpreter: He said he couldn't remember anyone except the youngest.

The Court: All right.

Q. (By Mr. Hargreaves): Who accompanied you to the United States in 1940?

A. Well, I was accompanied by Chow Sam and Chow Hing.

Q. Were they excluded from admission to the United States by a Board of Special Inquiry? [39]

Mr. Hertogs: I object to the question, your Honor. The record will show that they were admitted.

Mr. Hargreaves: The record will also show that they were first excluded and admitted on appeal. The purpose of the question is to show, if your Honor please, consistency in bringing sons to the United States—whether or not these other sons are citizens or not; and I believe it is a proper determination for the Courts to consider that evidence at the same time.

The Court: Well, it is a record fact, is it?

Mr. Hargreaves: It is a record fact that they were excluded by a Board of Special Inquiry.

The Court: Well, you don't need to ask him that, then. I will accept any statement either side wants to make so far as any record facts are concerned. If he will state what the record is, I think that will be sufficient, if you consider it material.

Mr. Hargreaves: If the Court please, the record indicates that Chow Hing and Chow Sam arrived in the United States December 29, 1940, ex-

(Testimony of Chow Yit Quong.)

cluded by a Board of Special Inquiry on April the 7th, '41; the case was reopened, re-excluded on August the 26th, '41, and it was appealed and the appeal was sustained in October, '41.

The Court: October of '41 they were admitted?

Mr. Hargreaves: They were finally admitted, yes. [40] I have the file here, if the Court wishes.

The Court: Well, that is not necessary. You are satisfied to accept that statement as to the facts?

Mr. Hertogs: Yes, as long as the record shows, your Honor, that the Appeal Board found that the decision of the Board of Special Inquiry was improper and admitted them as citizens.

The Court: Well, obviously they must have reversed them or else they wouldn't have been admitted.

Q. (By Mr. Hargreaves): You have stated that you were married for the second time on January, 1947, is that correct? A. Yes, in 1947.

Q. Where did that marriage take place?

A. In Canton City.

Q. Was the plaintiff present at the time of your marriage? A. No, he was not present.

Q. Was he present at the wedding feast which occurred after your marriage?

A. Well, during the wedding feast in Canton City, my son was not present; but when we had the feast in the village, he was then present.

Q. When was the first time the plaintiff saw your second wife? A. In the village.

The Court: When, when? [41]

(Testimony of Chow Yit Quong.)

A. (Continuing): I think it was in 1947, in January 17th or 18th.

Q. (By Mr. Hargreaves): In the village?

A. In the village.

The Court: Is that after the marriage?

The Witness: Yes, after the marriage.

Q. (By Mr. Hargreaves): I would like to refer to interrogatory—it was propounded to the plaintiff, interrogatory number four, in which he admitted that he testified that he was actually present at the wedding feast in Canton City. Do you have an comments to make on his testimony?

Mr. Hertogs: I object, your Honor. Interrogatories are not admissible in evidence. They may be admissible for purposes of cross-examination or impeachment, but they are not admissible in evidence.

Mr. Hargreaves: I will offer this, the interrogatories, into evidence for the purpose of impeachment.

The Court: The answers, you mean?

Mr. Hertogs: Interrogatories, your Honor, do not go to this witness. They go down to the plaintiff, Chow Seng.

Mr. Hargreaves: I am only trying to attempt to give this witness an opportunity to explain the testimony, if he can, of the plaintiff, when it is inconsistent with his own.

The Court: You mean the answer to the interrogatories, the plaintiff testified that he was present at the feast? [42]

(Testimony of Chow Yit Quong.)

Mr. Hargreaves: That's right. The plaintiff has testified before the immigration——

The Court: Admits he was present, it says.

Mr. Hargreaves: He says he was present in Canton City at the time of the marriage and he did attend the feast.

The Court: Well, of course now, what interrogatory do you want to propound to the witness?

Mr. Hargreaves: Well, I just wanted to give the witness an opportunity to explain the testimony of the plaintiff, if he could. It is inconsistent. That is, they can't be reconciled. The plaintiff says he was in Canton City at the feast, the witness says he was in the village.

The Court: Well, you have a contrary statement, then?

Mr. Hargreaves: That's right, your Honor.

The Court: Well, what good is it going to do to have the witness explain it?

Mr. Hargreaves: Well, I just want to find out if there is any logical explanation which he can give.

The Court: Well——

Mr. Hargreaves: Apparently——

The Court: ——just call his attention to the fact that his son so testified in answer to an interrogatory and ask him if he has any explanation of that.

Q. (By Mr. Hargreaves): In answer to Interrogatory No. 4, your son has stated that he testified before the Immigration [43] Service that

(Testimony of Chow Yit Quong.)

he was in Canton City at the time of your marriage and that he did attend the wedding feast which was held in Canton City. Do you have any comments to that statement?

A. Well, I believe my son misunderstood. I had two wedding feasts, one in Canton City and the other one in the village. My son was not present at the Canton City feast, but after six or seven days I accompanied my second wife to the village and had another wedding feast, and it was there that he was present.

Q. You are positive of that?

A. Yes, I am positive.

Q. Do you have any brothers or sisters?

A. Yes, I have.

Q. Please name them.

A. I have a brother named Chow Sang Quong. He is older than I am. That's all.

Q. You don't have any sisters, then, is that right?

A. No.

Q. Does your brother have any children?

A. Yes, he has.

Q. How many and what sex? Just the number.

A. He has six sons. Correction. Four sons and a daughter.

Q. Were any of those children residing in Kwantung, Po Village, at the time you were there on your recent trip to China?

A. Two of his sons were in the Kwantung, Po Village at the [44] time I was in China.

(Testimony of Chow Yit Quong.)

Q. Has the plaintiff ever been in Kwantung, Po Village? A. Yes, he has lived there.

Q. How much time has he spent in Kwantung, Po Village? A. About two weeks.

Q. When? A. In December of 1946.

Q. How large is Kwantung, Po Village?

A. At the present there are only three houses.

Q. And the plaintiff spent approximately two weeks in the village in 1946, is that correct?

A. Yes.

Q. At that time were the children of your brother residing in this three-house village?

A. Yes, two of his sons were living in Kwantung, Po Village then.

The Court: Is your brother an American citizen?

The Witness: Yes, he is.

Mr. Hertogs: He lives in San Mateo, also, your Honor.

Q. (By Mr. Hargreaves): I direct your attention to the answer of plaintiff to Interrogatory No. 10, in which he states in answer to the question of what family does your brother have, "I now that he has a wife and some children, but I don't know how many children.

"Q. Have you ever seen any of Chow Sang Quong's children?" [45]

He answered, "No."

Do you have any explanation for that statement if he was actually in the village?

A. Well, at the time my son arrived in Kwan-

(Testimony of Chow Yit Quong.)

tung, Po Village, my brother's two sons weren't there then.

Q. You have just previously testified that they were there.

A. Well, they were there when I had the wedding feast.

Q. Were they invited to the feast?

A. Yes, I did.

Q. Was the plaintiff at the feast?

A. Yes, he was.

Q. Do you know why he should also state that he does not know the names of any of those children?

A. Well, he never seen them, so he wouldn't know their names.

Q. You have just testified he was at the feast together with them.

A. Well, there was so many people there and I didn't introduce them to him.

Q. How many people were at the feast?

A. About 15 or 16 people.

Q. Were there any other relatives there?

A. Yes, some relatives of my former wife, that is, my deceased wife.

Q. But these were the only two persons who were actually your relatives, is that correct? [46]

A. Yes, from my family.

Q. You have stated that your first wife passed away in 1943, is that correct?

A. Yes, in 1943.

Q. Where did her death occur, that is, in what

(Testimony of Chow Yit Quong.)

place? A. At the Kwantung, Po Village.

Q. What was the cause of her death?

A. Well, it was some kind of a sickness.

The Court: What kind of a sickness?

The Witness: Well, it was a contagious disease.

The Court: What kind of a contagious disease?

The Interpreter: He couldn't say. It is a contagious disease, that's all.

The Court: Were you there at the time of her death?

The Witness: No, I was in the United States then.

The Court: All right.

Mr. Hargreaves: How did you learn of your wife's death?

A. Well, I received a letter from my son.

Q. Which son?

A. The oldest son, Chow Bow.

Q. Did he tell you in that letter that your wife had died in the village? A. Yes.

Q. When and where did your daughter die?

A. My daughter died three days previous to my wife's death. [47]

Q. Was that also in the village?

A. Yes.

Q. Where are your wife and daughter buried?

A. Well, my daughter was buried right opposite my village. It is called Saw Dei.

Q. And the mother?

A. My wife is buried in Lei Jee-un.

Q. Is that near the village? A. Yes.

(Testimony of Chow Yit Quong.)

Q. Did you visit their graves when you were in the village on your last trip?

A. Yes, I did.

Q. Has your wife's body ever been removed and reburied?

A. Yes, the graves were opened and the bones taken out and then reburied in the same place.

Q. Still near the village; is that correct?

A. The same place.

Q. That was the original burial ground?

A. Yes, the original burial ground.

Q. I direct your attention to the plaintiff's answer to Interrogatory No. 11, in which he states that his mother and his sister both died in Macao. Do you have any explanation?

A. Well, he was very young then. I think he don't remember.

The Court: Well, how old was he at the time?

The Witness: I think he was about eight years old then. [48]

Mr. Hargreaves: The record will reveal, your Honor, that he was claiming birth in '34; the death occurred in 1943.

Mr. Hertogs: About eight and a half years old, your Honor. The death was in March and the birth was in August.

Q. (By Mr. Hargreaves): In Interrogatory No. 11, the plaintiff has also stated that his mother was buried in Macao and that his sister was buried there.

(Testimony of Chow Yit Quong.)

A. Well, all right, then say that he was very small and couldn't remember the events.

Q. He also testified that on your last trip to China you moved your wife's body from Macao to the home village and that you told him so.

A. Well, he just misunderstood me. What he meant was that I reopened the grave and then took the bones out and then rebury it again in the village.

The Court: Why did he do that?

Mr. Hertogs: That is a custom, your Honor—Chinese custom. They do it all the time.

The Interpreter: That is the Chinese custom in our village.

The Court: All right.

Q. (By Mr. Hargreaves): The plaintiff has also testified that his sister is still buried in Macao.

A. No, she was buried in the same day in the village.

Q. Has the petitioner ever resided in Quei Hing? [49]

The Court: He means did he ever live in Quei Hing.

Mr. Hargreaves: That is Quei Hing City.

The Court: Quei Hing City.

The Interpreter: You mean Quei Yung?

Mr. Hargreaves: Yes, that's right.

A. Yes, two nights.

Q. (By Mr. Hargreaves): I am speaking of the plaintiff, Chow Seng.

A. Yes, he did.

Q. Did he only stay there two nights?

(Testimony of Chow Yit Quong.)

A. I mean, I was there for two nights.

Q. How long did Chow Seng live in Quei Yung City? A. I think two or three years.

Q. When you were in Quei Yung for those two nights, where did you stay?

A. I was living at a place called Fat Yun Low.

Q. Is that the same place where Chow Seng was living? A. Yes.

Q. How many stories were in that building?

A. It is a house with a little mezzanine floor.

Q. You previously testified that there were four rooms in the loft. Was that correct?

A. Yes, I did.

Q. How many of your sons were living there?

The Interpreter: You mean in the house or in the loft? [50]

Q. (By Mr. Hargreaves): The house.

A. Five sons together.

Q. Was there more than one building?

A. It is only one building.

Q. You previously testified that that was made of brick with wooden lofts, that there was a store below the lofts. Is that correct?

A. Well, the ground floor was a store.

Q. Was there a stairway to the loft?

A. Yes.

Q. Now I direct your attention to the Interrogatory No. 12 of the plaintiff, in which he describes the living quarters in Quei Yung City as consisting of three separate buildings, each of only one story. Do you have comment?

(Testimony of Chow Yit Quong.)

A. Well, there was three buildings but connected together.

Q. Was there actually a two-story building, as you have testified?

Mr. Hertogs: I object, your Honor. He hasn't stated there was a two-story building. He said there was a ground floor and a mezzanine.

Mr. Hargreaves: All right, we will change the question.

Q. (By Mr. Hargreaves): Was there actually a building with a mezzanine or loft?

A. Yes.

Q. The plaintiff states that there were no lofts, that the [51] first building was used as a kitchen and a dining room, the second and third buildings were used as bedrooms. This does not conform to your testimony as to the one building with lofts.

A. Well, I think my son was mistaken.

Q. He also testified in answer to the question, "Was there a stairway of any kind in any of those buildings"?

"A. There was only one bamboo stepladder which was used to hang things up on nails on the wall."

You have testified there was a stairway. Do you have any comment?

A. Well, yes. My answer is there is not exactly a stairway, but the ladder, the bamboo ladder.

Q. Then your answer of stairway was not correct, is that right?

(Testimony of Chow Yit Quong.)

A. Well, we call it a stairway and to say—and in fact it is a moving stairway, made of bamboo.

Q. Where did you sleep, that is, in what room while you were there the two days?

A. As you go in there's four rooms and I was in the rear room.

Q. In the which?

The Interpreter: Rear.

Q. (By Mr. Hargreaves): The plaintiff has described the sleeping arrangements as that you slept in the first building, [52] that he and two of his brothers slept in the middle building. Do you have any comment?

A. Well, I know that the first room was occupied by my oldest son and then the second room was occupied by Chow Bow, my second son, the third room was occupied by my son, Chow Seng, and the rear room was occupied by me and also Chow Wing.

Q. Do you still claim that there were not three buildings but all these rooms were actually in the loft in one building?

A. Yes, there's four rooms in the loft.

The Court: You have some more questions, I take it, Mr. Hargreaves?

Mr. Hargreaves: Yes.

The Court: Perhaps we might take the recess at this time. I will not be able to hold session after three o'clock today, because of some matters that have to be attended to. But we will meet at 1:30 and then run until three o'clock. I assume we won't be able to finish this case today?

Mr. Hargreaves: I don't believe so, your Honor.
The Court: Well, we will reconvene at 1:30.

(Whereupon an adjournment was taken until
1:30 o'clock this day.) [53]

Monday, December 8, 1952—1:30 P.M.

CHOW YIT QUONG

resumed the stand and having been previously
sworn, testified further as follows:

Cross-Examination
(Continued)

By Mr. Hargreaves:

Q. Mr. Chow, just before lunch you testified
that you and Chow Seng were in the home village
for approximately two weeks in the first part of
1947, is that correct?

A. He stayed in the home village two weeks, but
I only stayed there one week.

Q. You were together with Chow Seng in the
village for one week, is that correct?

A. He went to the home village one week prior
to my return.

The Court: He still hasn't the question.

The Interpreter: That is the way he answered.

The Court: Well, try him again.

The Interpreter: I am trying to get exactly
what he said.

The Court: Ask him again if he was there one
week at the same time as Chow Seng.

(Reinterpreted.)

(Testimony of Chow Yit Quong.)

A. Yes, we lived together for a week.

Q. (By Mr. Hargreaves): During that time what were the [54] sleeping arrangements in your home in Kwantung, Po Village?

A. We were not living in one house. He lives in the old house and I lived in the one next to it.

Q. Do you mean that you slept in one house and he slept in another house? A. Yes.

Q. I direct your attention to Interrogatory No. 9, in which the plaintiff has stated that during the time that you were in the village with him, that you, your wife—your second wife, that is—and the plaintiff all slept together in one house.

A. No, that isn't true, and my wife lived in one house and he lived in another.

Q. You previously stated that the village consisted of three houses, is that right?

A. Yes, there were three houses.

Q. Do you recall testifying before the Board of Special Inquiry at the Immigration and Naturalization Service at the time Chow Seng entered the United States? A. Yes, I was there.

Q. Do you recall testifying at that time that there were four houses in the village?

A. Well, at that time I meant to say there were three houses and one temple or ancestral hall.

Q. Has there ever been more than three houses in the village? [55]

The Interpreter: Does that include the ancestral hall?

(Testimony of Chow Yit Quong.)

Mr. Hargreaves: No, just the houses, excluding the ancestral hall.

A. There were only three houses.

Q. That is all there has ever been?

A. Used to be eight houses.

Q. What happened to the other five houses?

A. They were all torn down.

The Court: All what?

The Interpreter: Torn down.

Q. (By Mr. Hargreaves): So the time that you and the plaintiff were in the village, there were only three houses, is that correct?

A. Yes, that's correct.

Q. Did the petitioner or the plaintiff ever reside in the village at any time other than that two-week period? A. No.

Q. Did he reside in the village for approximately eight months after your wife's death?

A. I was in the United States then. I think he lived there for a period.

Q. You believe then that he resided in the home village for approximately eight months, in 'approximately 1943 or 1944, is that right?

A. Yes. [56]

Mr. Hargreaves: I have no further questions, your Honor.

Redirect Examination

By Mr. Hertogs:

Q. Counsel for defendant asked you previously if you registered the birth of this plaintiff with the

(Testimony of Chow Yit Quong.)

American Consul General at Hong Kong, Canton or Macao. Now did you register the birth of any of your other children at the American Consulates in China? A. No.

Q. You previously testified that at the feast which was held subsequent to your marriage to the second wife, that the two children of your brother were the only relatives present. Now wasn't the wife of your second brother or the wife of one of her sons present also at that feast?

The Interpreter: I didn't get the question.

(Record read.)

Mr. Hargreaves: I believe, your Honor, he stated that his own relatives, his blood relatives he is referring to.

A. Well, at the feast, besides my brother's two sons, there was the wife of my brother's elder son.

Q. The wife of your brother's eldest son?

A. Yes.

Q. Where was she living?

A. She was living in my old house.

Q. In the old house? A. Yes. [57]

Q. Is that the same house where Chow Seng was living? A. That is correct.

Q. Now you testified that you were living in the new house, which is next door. Now did you eat your meals in the new house or did you eat your meals in the old house?

A. Yes, we went to Chow Seng's house for our meals.

(Testimony of Chow Yit Quong.)

Q. You actually had your meals, then, in the same house as Chow Seng, the same house Chow Seng had his meals? A. Yes.

Q. Did you normally stay in that house or the house next door, except for sleeping at night?

A. Well, I normally moved from one house to another, but when we have the meals I usually go to Chow Seng's house.

Q. Now you have stated that you were informed that your wife died in Kwangtung, Po Village. When did you receive such notification?

A. It was when the Japanese surrendered. That was the time I received notice that my wife died.

Q. Now you previously testified that your family was living in Macao and you have likewise testified that your wife died in Kwantung, Po Village, in 1943. Now when did the family move back to Kwantung, Po Village?

A. Well, I don't quite remember the exact date, but it was after the Japanese occupation of Hong Kong that we moved back to the village. [58]

Q. You weren't there at that time, is that correct? A. I was in the United States.

Q. Had they been back in the village long before the death of your wife?

A. After we moved back to the village and about six months afterwards that was when my wife died.

Q. Now you previously testified that the Kwantung, Po Village, has three houses, now standing. Are there any ruins of the other five houses still remaining?

(Testimony of Chow Yit Quong.)

A. Well, there was some old walls there remaining.

Q. Old walls left. Is that all? A. Yes.

Q. Now once again, I show you Plaintiff's Exhibit No. 2 for identification and ask you if you know where that picture was taken.

A. It was taken in Macao.

Q. Do you know when it was taken?

A. It was the year when his mother died.

Q. The same year the mother died?

A. After this picture was taken, we moved to the village.

Q. Now you previously stated that the picture was taken in 1938. Now you state it was taken just before the family moved to Kwantung, Po Village. Now which of those answers is correct?

A. Well, immediately after the taking of this picture we [59] moved back to the village.

Q. Was Chow Seng smaller than this on the last trip you made to China before World War II—smaller than the size indicated by that picture?

The Interpreter: That is when the trip—the trip he made after World War II?

Q. (By Mr. Hertogs): Was Chow Seng smaller than this at the time of his return to the United States just prior to World War II?

The Interpreter: I still can't get that.

Mr. Hertogs: He returned, see, to the United States in 1940. How large was Chow Seng in physical stature at that time?

A. I don't think the picture was taken in 1940.

(Testimony of Chow Yit Quong.)

The Court: No, what he wants to know is this. Was Chow Seng bigger or smaller than he appears in that picture in 1940 when he came back to the United States?

A. Well, in 1940 he was older than this picture.

Q. (By Mr. Hertogs): He was older than this picture? A. M-hm.

Q. How could he be older in 1940 and this picture have been taken subsequent to your return to the United States and just before your family moved back to Kwantung, Po Village?

A. Well, in other words, I meant to say that this picture was taken after my return to the United States. [60]

Q. Were you in China or the United States when this picture was taken?

A. I had already returned to the United States.

Q. Now how did this picture come into your possession?

A. Well, I got it when I returned the last time to China and brought my son over.

Mr. Hertogs: I will ask the picture showing six individuals be marked as plaintiff's exhibit next in order, and if there is no objection on the part of counsel, your Honor, I would rather substitute a copy of it, because it belongs to someone else.

Mr. Hargreaves: That's all right.

The Clerk: Plaintiff's Exhibit 8 marked for identification.

(Whereupon photograph referred to above was marked Plaintiff's Exhibit No. 8 for identification only.)

(Testimony of Chow Yit Quong.)

Q. (By Mr. Hertogs): I show you Plaintiff's Exhibit No. 8 for identification and ask you if you have seen this picture before?

A. Yes, I have seen it.

Q. And are you in that picture? A. Yes.

Q. And when and where was that picture taken?

A. It was taken in 1947 in Canton City.

Q. Will you tell us who the people are from right to left? [61]

A. The first one is me, the second one is Chow Seng, the third one is So Tak, the fourth one is So Tak's wife, the fifth one is my second wife, the sixth and last one is my god-daughter.

Q. Now is this person, So Tak, that you refer to here, present in the courtroom at this time?

A. Yes, he is here.

Q. And is he sitting in the rear of the courtroom? A. Yes.

Q. Now what was the occasion of this picture?

A. That is the wedding picture of So Tak.

Q. Now I notice in this picture that Chow Seng appears to be small for his age at that time. Was he always small for his age?

A. He has always been very small.

Q. You previously testified that your wife and daughter died of certain contagious diseases in China. Do you know whether or not Chow Seng had that contagious disease? A. No.

Mr. Hertogs: I have no further questions, your Honor.

(Testimony of Chow Yit Quong.)

The Court: Anything else?

Mr. Hargreaves: Yes, your Honor.

Recross-Examination

By Mr. Hargreaves:

Q. You previously stated you recall testifying before the Board of Special Inquiry in San Francisco [62] at the Immigration Service, is that correct? A. Yes.

Q. I now show you page 15 of that Board record and ask you if that is your signature.

A. Yes, that is my signature.

Q. On page 10 of this record there is a question, "Describe briefly the Kwantung, Po Village, as it was when you last saw it." Your answer, "There were only four houses. That is, four dwelling houses, when I last saw the village, in January, 1947. There are two houses and a house back of each of them. There was also a temple called Quan Dai."

You have just now testified that there were only three houses. Which testimony is correct?

The Interpreter: The questions are pretty long. Could I ask him——

Mr. Hargreaves: Do you want to read it?

The Interpreter: Ask him answer by answer?

Mr. Hargreaves: Here (indicating).

The Interpreter: I have explained the question.

Q. (By Mr. Hargreaves): Which is correct, his present testimony or this he gave before the Board?

(Testimony of Chow Yit Quong.)

A. What I meant is three dwelling houses and a temple. That's four all together.

Q. At that time you stated there was a house, there were two houses and a house back of each of them and a temple to [63] the north of the village. That testimony was not correct, then, is that right?

The Interpreter: He has even got me confused.

The Court: Well, that is the vice of asking those questions. All a cross-examiner should do is present a contrary statement and ask for explanations—you get arguments.

Mr. Hargreaves: All right. I will withdraw the question, your Honor.

I would like to have the certified copy of the Board record marked for identification.

The Clerk: Defendant's Exhibit A marked for identification.

(Whereupon document identified above was marked Defendant's Exhibit A for identification only.)

Mr. Hargreaves: Forget the question.

The Court: Anything else of the witness? Mr. Interpreter, how old were you when you came to the United States in 1923?

A. I was 25 years old then.

The Court: So you are now how old?

A. 53 years.

Q. Between 1923 and the present time, you spent about half your time in China, is that right?

(Testimony of Chow Yit Quong.)

A. Well, I am not clear on that. I am here and there.

Q. Well, he ought to know. You tell him I think he ought [64] to be able to answer that. I say that for the 28 years since 1923, about half that time he spent in China, is that right?

A. I think I spent more time here than in China.

The Court: Well, the record shows about 14 years in China, is that right, between 1923 and the present time?

Mr. Hertogs: Well, not——

The Court: Well, almost 14, the way I figure it, more or less.

The Court: Well, the next question is this. What did you do during those years that you were in China? What did you do?

A. Well, my family is there, so I just go back and visit them.

Q. Did you do any work or engage in any business during the years that you spent in China since 1923? A. No, I did not.

Q. The only time you worked from 1923 was when you were living in the United States?

A. That's correct.

Q. And what was your first, what did you do the first two or three years by way of work after you came to the United States in 1923?

A. I was working in a Chinese restaurant.

Q. All right. What work did you do in China before you left there in 1923? [65]

(Testimony of Chow Yit Quong.)

A. I was farming in China.

Q. Now from 1923 to the present, up to the present time, where do you consider your home, in the United States or in China?

A. I consider the United States my home.

Q. Well, if you consider the United States as your home, why did you spend so many years in China after 1923?

A. Well, most of my family is in China, so I have to go home and go back and visit them until they are all here.

Q. Now I understand that from 1946 to 1950 you lived in China, is that right? A. Yes.

The Court: Mr. Interpreter, how old are you?

The Interpreter: I will be 50 next week.

The Court: Were you born in the United States?

The Interpreter: Yes.

The Court: So you went to school here in the United States?

The Interpreter: Yes, but I have been to China for about six years.

The Court: Any other questions, counsel?

Mr. Hertogs: No, your Honor.

The Court: That's all.

Mr. Hertogs: Your Honor, at this time I would like to call the Court's attention, and ask the Court to take judicial [66] notice of the fact that it was impossible for this man to bring his wife to the United States from the time of his entry in 1923 up to——

The Court: I wasn't intending to make any

point of that. Any questions I asked were directed to the general picture of the situation that I think is applicable to many of these cases, that's all. I realize that what you say is correct.

(Witness excused.)

Mr. Hertogs: At this time, your Honor, normally I would call the plaintiff as a witness next in order, but I have an out-of-town witness who has a business in Susanville, and I would prefer to call him out of turn.

The Court: Very well.

Mr. Hertogs: So Tak.

The Clerk: Does this witness understand English?

Mr. Hertogs: Well—just in case——

So Tak, do you understand enough English?

(So Tak nodded in the affirmative.)

SO TAK

called on behalf of the plaintiff, sworn.

The Clerk: Please be seated. Will you tell the Judge your name? A. My——

The Court: What is your name? [67]

A. My name is So Tak.

The Clerk: How do you spell that?

A. S-o T-a-k.

The Court: Tak?

The Witness: Yes.

The Court: So Tak?

The Witness: Yes.

The Court: Is that right?

(Testimony of So Tak.)

Mr. Hertogs: Yes, your Honor.

(Answers given in English except as otherwise indicated.)

Direct Examination

By Mr. Hertogs:

Q. And where do you live, So Tak?

A. I live Susanville.

Q. And are you a United States citizen?

A. Yes.

Q. And how did you acquire your United States citizenship? A. 1955 I take the citizenship.

Q. 1945? A. 1945.

Q. 1945? A. Yes.

Q. You were naturalized while you were in the Army, is that correct? A. Yes.

Q. Do you have any proof of United States citizenship with you? [68] A. Yes.

Q. May I see it, please.

A. Citizenship — I — paper here. Citizenship paper. (Producing document.)

Q. Citizenship papers there. But you have something, haven't you?

(Witness stood, addressed a remark in Chinese to a man seated in the body of the courtroom, an overcoat was transported by the said man to the courtroom barrier, a document was produced therefrom and transmitted to counsel via the interpreter.)

(Testimony of So Tak.)

A. I am citizen, I have passport.

Q. (By Mr. Hertogs): You have a passport?

A. Yes.

Q. United States Passport No. 2667, issued in San Francisco to So Tak, S-o T-a-k, 115 Waverly Place, San Francisco, on May 7, 1947.

Is that your picture? A. Yes.

Q. On page 4 of this document. And you were naturalized while you were in the Army, is that correct? A. Yes, m-hm.

Q. Do you know a man named Chow Yit Quong?

A. Yes, and——

Q. And when did you first meet Chow Yit Quong? [69]

A. 1936

Q. 1936? A. Yes.

Q. Where did you meet him in 1936?

A. Hong Kong.

Q. In Hong Kong? A. M-hm.

Q. And how long did you know him at that time?

A. Oh, before, I know three, four days.

Q. Three or four days? A. M-hm.

Q. When did you first see Chow Yit Quong?

A. On this time he come, I get army, I come San Francisco, I know him, I know him.

Q. You met him here again in San Francisco?

A. Yes.

Q. And when was that?

A. Waverly, you know, 115, I know him.

Q. 115 Waverly Place? A. M-hm.

(Testimony of So Tak.)

Q. Now, what year was this?

A. I come 1946, San Francisco.

Q. 1946? A. M-hm.

Q. Now, did you make a trip to China subsequent to that time? [70] A. Yes.

Q. And when did you make this trip to China?

A. 1947.

The Court: 1947?

Q. (By Mr. Hertogs): May I see that passport again, please?

A. Yes (producing).

(Conversation between Messrs. Hargreaves and Hertogs out of hearing of the reporter.)

Mr. Hertogs: This passport indicates you returned to the United States on September 8, 1947, and were admitted by the Immigration and Naturalization Service at that time. Is that the correct date of your return?

A. Yes, I come back then.

Q. Now, how long had you been in China on that trip? A. Two months, 18 days.

Q. What was the purpose of that trip to China?

A. How long is——

Q. Why did you go to China?

A. May or June.

Q. You went in May or June, but why?

A. Oh, I go to China to get married.

The Court: What was the answer?

Mr. Hertogs: To get married.

Q. (By Mr. Hertogs): I show you——

(Testimony of So Tak.)

A. I went to China to get married. [71]

Q. You went to China to get married?

A. Yes.

The Court: What is the matter with the Chinese girls in the United States? Why don't some of the Chinese boys and men here marry the Chinese girls that are in the United States?

The Witness: Oh, I don't know, I go to China and marry.

The Court: I know you did that, but I say, why did you go to China to get married?

The Witness: I like it better China.

The Court: Why do you like it better? What's the matter with these girls?

The Witness: Oh, here—I don't know. You know, I don't know much English, you know me. I no English.

The Court: Well, you mean that the Chinese girls of Chinese ancestry in this country speak better English than you? Is that what you mean?

The Witness: I not much English. He—don't know with me.

The Court: I never thought—I was going to say that I never thought language was a barrier to that sort of thing.

The Witness: I like in China. I don't like him here.

The Court: I asked that question because this is one of the things that I commented on in the other case, and that I have observed in so many of the cases, that there is a pattern that is followed—

(Testimony of So Tak.)

here the American citizens of Chinese [72] ancestry; everyone of them has to go back to China to find a gal to marry.

Mr. Hertogs: That is true, your Honor.

The Court: Well, it is true, but there is a definite significance to that in connection with these cases.

Mr. Hertogs: I don't think—I think the Court is stressing that point too much. I think you would find——

The Court: I don't know what the meaning of it is, Mr. Hertogs. I just say that it is a matter of some significance. I don't know how to evaluate it. I am not pretending to.

Mr. Hertogs: It is a question of where the number of boys and the number of girls married here, usually the American born are inter-marrying, whereas those who are born in China go back to China and marry. There has been a pattern for—even all these veterans that were naturalized during World War II and even a number of our American born veterans of World War II all returned and married Chinese girls who were born in China.

Q. (By Mr. Hertogs): I will show you Plaintiff's Exhibit No. 8 for identification and ask you if you have seen this picture before?

A. Yes.

Q. And when did you see that picture?

A. The place, Canton.

Q. Canton City? [73] A. Yes.

Q. When was that picture taken?

(Testimony of So Tak.)

A. Oh, take this picture I marry Leon Tung Company.

Q. Leon Tung Company picture?

A. M-hm.

The Court: That is when you got married?

The Witness: Yes.

The Court: That is your——

The Witness: I marry.

The Court: Where's your wife now?

The Witness: Susanville.

The Court: Where?

The Witness: Susanville.

The Court: Oh, she is over here? You live here?

The Witness: I work Susanville.

The Court: I see.

The Witness: I live—I leave her in Susanville.

The Court: She came in as a war bride?

Mr. Hertogs: Yes, your Honor.

The Court: Is that right?

Mr. Hertogs: Yes, she returned.

Q. (By Mr. Hertogs): Will you identify these people from right to left?

A. Oh, Chow Yit Quong——

Q. Who is the next? [74]

A. Chow Seng.

Q. Chow Seng? A. This is me.

Q. That is yourself? A. My wife.

Q. Your wife?

A. He is Suey Hong, his wife.

Q. Whose wife? A. Chow Yit Quong.

Q. Chow Yit Quong's wife?

(Testimony of So Tak.)

A. A God-sister.

Q. God-sister? A. God-children.

Q. And this was taken right after your marriage, is that correct? A. Yes.

Mr. Hertogs: Ask that it be introduced in evidence, your Honor.

The Clerk: Plaintiff's Exhibit 8 admitted into evidence.

(Whereupon Plaintiff's Exhibit 8 for identification only was recieved in evidence.)

Q. (By Mr. Hertogs): Now, while you were in China on this trip, did you meet a boy identified as Chow Seng? A. M-hm.

Q. That is the same boy whose picture appeared in that picture? [75] A. Yes, same boy.

Q. And where did you meet him?

A. Oh, I marry, you know—I don't know, not much here—I know Chow Yit Quong, Chow Seng.

The Court: Did you get that?

The Reporter: Not all of it.

Mr. Hertogs: Would you like to use the interpreter?

The Court: Well, take it slower. Maybe we can get it.

Q. (By Mr. Hertogs): How did you meet Chow Seng at that time?

A. Oh, he — father, you know — Chow Seng father.

Q. Yes.

(Testimony of So Tak.)

A. I know him, I told his boy come up see me, I take some pictures.

Q. You told him to come and see you and take some pictures? A. Yes.

Q. You knew Chow Yit Quong here in the United States? A. M-hm.

Q. And did you know Chow Yit Quong was in China? A. Yes.

Q. How did you know that he was in China?

A. Oh, I go back to China, go back Hong Kong.

Q. Yes?

A. You know, I find Chow Yit Quong.

Q. You find—And where did you find Chow Yit Quong? [76] A. I go Je-ung Wing Company.

Q. Je-ung Wing Company? A. M-hm.

Q. And what did they tell—

A. They told me Chow Yit Quong leave Canton, China.

Q. Lived in Canton, China?

A. Canton, China.

Q. Where did you see Chow Yit Quong in China?

A. I go, finally he go over to Canton, China, you know—I go, he, I see.

Q. You went to see him, went to his home to see him, is that right? A. Yes.

Q. When was that? A. Right after—

Q. It was after you returned, right after you returned to China? A. Yes.

Q. Was that before or after your marriage?

A. Oh, after married, I go, before—I go China,

(Testimony of So Tak.)

I see him, I see Canton, you know, live hotel.

Q. You lived in a hotel? A. Yes.

Q. Where? A. Canton. [77]

Q. Where were you married in Canton or Hong Kong? A. Married Canton.

Q. Married in Canton. Now, you saw Chow Yit Quong in Canton, is that right? A. Yes.

Q. And did you see Chow Seng? A. Yes.

Q. In Canton? A. Yes.

Q. Now, the Chow Seng you saw in Canton, is he the same boy that is here in the courtroom today?

A. Yes, yes.

Q. Same boy? A. Same boy.

Q. Now, how did you meet Chow Seng in China?

A. Oh, I go, I know Chow Yit Quong. I see Chow Seng, he boy.

Q. You knew—now let me see if I have this right. You knew Chow Yit Quong and he introduced you to Chow Seng as his boy? A. Yes.

Q. Chow Seng is his boy?

A. He told me his boy.

Mr. Hargreaves: I object, your Honor, on the grounds it is hearsay as to what Chow Yit Quong told him. [78]

The Court: Well, it doesn't add anything very much to the testimony of the father except that it's in a sense corroborative.

Mr. Hertogs: It is corroborative evidence, your Honor. I am going to develop a little farther and see how much more he knew about this.

(Testimony of So Tak.)

The Court: Well, it is a little difficult to get the answers. We had better have the interpreter.

(Following answers given through interpreter except as otherwise noted.)

Q. (By Mr. Hertogs): Explain to us how you first met Chow Seng.

A. I went to his house, that is, Chow Yit Quong's house, and Chow Yit Quong introduced me to Chow Seng as his son.

Q. Where was Chow Yit Quong and Chow Seng living at that time?

A. They were living at Ting Yung How Street, No. 6, in the Tung San District.

The Court: Where's that town?

A. In Canton, China.

Q. (By Mr. Hertogs): Did you visit Chow Yit Quong's home? A. Yes.

Q. Now, was Chow Seng living in that house at the same time? A. Yes, they were

Q. Were you introduced to Chow Seng at the time that you [79] first appeared at that house?

A. Yes.

Q. And Chow Seng was there at that time?

A. Yes, he was there.

Q. Was Chow Seng also living in that house?

A. Yes.

Q. Now, did Chow Yit Quong tell you that Chow Seng was his son?

Mr. Hargreaves: Objection; hearsay.

The Court: Well, he has already answered it.

Mr. Hertogs: I was trying to clarify it. I

(Testimony of So Tak.)

wasn't sure it was in the record, before, your Honor.

The Court: Well, he has already answered it.

Mr. Hertogs: All right, I will withdraw that question.

Q. (By Mr. Hertogs): Were Chow Yit Quong and Chow Seng living together at that time as father and son? A. Yes.

Q. Now, did you see Chow Yit Quong and Chow Seng together at any other time in Canton?

A. I go to his house for meals quite frequently.

Q. Did Chow Yit Quong and Chow Seng also attend your wedding?

A. They were there but they were kind of late.

Q. Well, did they attend the feast given after your wedding? A. Yes, they were present.

Mr. Hertogs: I have no further questions, your Honor. [80]

Cross-Examination

By Mr. Hargreaves:

Q. When did you first enter the United States?

A. 1942.

Q. How did you enter, what status?

A. As a crew member.

Q. How were you able to remain on shore if you were a crew member?

A. Well, I volunteered to enter the United States Army.

Q. How long had you been on shore before you volunteered in the Army? A. Five days.

(Testimony of So Tak.)

Q. Do you mean that only five days after your arrival the Army would accept you as a member?

A. Yes.

Q. Did they ask you if you were a citizen of the United States?

A. Well, they did ask me that question and I answered that I was not a United States citizen.

Q. Did you tell them that you had only been in the United States for five days?

A. Yes, I did tell them.

Q. You stated that you saw Chow Yit Quong in Hong Kong in 1936. Did you see any of his children at that time?

A. No, I didn't know his children then.

Q. Have you seen any other children of Chow Yit Quong's [81] other than Chow Seng?

A. No.

Q. You stated that you were in China for about two months and 18 days. How were you able to arrange a marriage on that short a time.

A. Well, I had to get back to the United States immediately.

Q. That is not an answer to the question. How did he arrange his marriage in two month's time?

A. Well, as a veteran I can get married immediately after my registration.

Q. Did you make any arrangements for your marriage?

The Court: What he is trying to find out is how he did such a quick job of getting a gal and getting married. How does he answer that?

(Testimony of So Tak.)

A. Well, I like the girl, so we just get married and I return to the United States.

Q. (By Mr. Hargreaves): Did you make any arrangements before you went to China for the girl?

A. I had my mind set on getting married when I go to China, so I just did it.

Q. Did you send any money over to her parents?

A. No.

Q. Did you give her parents any money at the time after your arrival? A. No. [82]

Q. How did you meet her?

A. She was introduced to me by Chow Yit Quong's wife.

Q. How long did you know her before you got married? A. Ten days.

Q. Actually, didn't you purchase your wife in China?

Mr. Hertogs: Object to the question, your Honor, as irrelevant and immaterial, improper question on cross-examination.

Mr. Hargreaves: Believe it goes to the credibility of the witness.

The Court: Well, it is a little bit far fetched as to credibility.

Mr. Hargreaves: It is a common practice in China, your Honor; most of the wives are purchased.

The Court: That might have some bearing on all these cases, among a great many other factors, but I don't see that it is particularly pertinent as a matter of cross-examination.

(Testimony of So Tak.)

Mr. Hargreaves: I will withdraw the question.

The Court: It may well be that they did or didn't. As far as this witness is concerned, I don't see its materiality.

Mr. Hargreaves: I will withdraw the question.

Q. (By Mr. Hargreaves): How much time did you actually spend in the home of Chow [83] Yit Quong?

A. I went to Canton City on July the 17th and got married on July the 27th. Then I returned to Hong Kong on the 29th.

Q. Then you were in Canton City approximately ten days, is that right? A. 12 days altogether.

Q. And you visited Chow Yit Quong's home occasionally during that 12 day period?

A. Ever day I see him.

Q. Now, during that time didn't Chow Yit Quong intend to bring Chow Seng to the United States?

A. No, he didn't tell me anything about it.

Q. Did you desert your ship when you came into the United States. A. Yes.

Mr. Hargreaves: No further questions.

Mr. Hertogs: No further questions, your Honor.

The Court: That's all.

(Witness excused.)

Mr. Hertogs: The Government doesn't want this witness present any longer, do they?

Mr. Hargreaves: No.

Mr. Hertogs: He may go home.

Mr. Hargreaves: Yes.

Mr. Hertogs: Next witness will be Chow Seng, your Honor.

The Clerk: He doesn't understand [84] English?

Mr. Hertogs: No.

CHOW SENG

called on behalf of the plaintiff, sworn.

(Answers given through interpreter.)

The Clerk: Please have him take the witness stand. Will you please have the witness state his full name to the Court.

A. Chow Seng.

Direct Examination

By Mr. Hertogs:

Q. Where do you live?

A. 628 Montgomery Street, San Francisco.

Q. And who do you live with at that address?

A. With my father.

Q. Who else lives with you?

A. That's all.

Q. How long have you lived together?

A. Since I was released from the Immigration Service, at the present time.

Q. Do you have the same sleeping accommodations?

The Court: What do you mean, do they sleep in the same room?

Mr. Hertogs: Same room, your Honor.

A. Yes, we sleep in the same room.

(Testimony of Chow Seng.)

Q. (By Mr. Hertogs): Do you have your meals together? [85] A. Yes.

Q. Now, who did you live with immediately prior to coming to the United States?

The Interpreter: He is not responsive.

(Reinterpreted.)

A. I was living with my father.

Mr. Hertogs: Who else was living with you at that time?

A. I was living with my father in Canton City.

Q. Yes, who else was living with you in Canton City besides your father?

A. My father's second wife.

Q. Anyone else? A. My god-sister.

Q. Did your father have any children by his second wife? A. Yes.

Q. How many?

A. When I came to the United States he had one.

Q. Has one been born since that date?

Mr. Hargreaves: Can't hear you, counsel.

Mr. Hertogs: One born subsequent to that date.

A. Yes.

The Court: A boy, too?

The Interpreter: Boy.

The Court: What becomes of all the girls in China? How do they get this big population when in all the cases I have [86] seen here, all boys are involved? All boys—no girls.

Mr. Hertogs: Well, your Honor, I might state

(Testimony of Chow Seng.)

that I expected that question, so I made a little search the other day and I find that slightly more than 30 per cent of these cases that I have filed involve girls.

The Court: Well, that's more than I would have thought.

Mr. Hertogs: That is what I expected. That is the reason I looked it up. I have slightly more than 30 per cent of them who are girls, your Honor.

Mr. Hargreaves: Does counsel know what per cent the actual number of girls or boys in the cases is?

Mr. Hertogs: I presume it is the same as it is here.

The Court: Well, my point was that in these cases I have seen, that is, particular cases filed, the children are practically all boys. I know there have been some cases that do involve girls, but I mean, the family—they are practically all boys.

Q. (By Mr. Hertogs): I will show you Plaintiff's Exhibit No. 1 and ask you if you have seen this picture before. A. Yes, I have seen it.

Q. And where did you see that picture before?

A. Before I came to the United States.

Q. Are you in that picture?

A. Yes, I am in it.

Q. And who are the other persons in that picture, identifying them from right to left? [87]

A. The one on my right is my father. The second one is me. The third one is my god-sister. The

(Testimony of Chow Seng.)

fourth one is my step-mother. The child is my little brother.

Q. And when and where was this picture taken?

A. I can't recall the date.

Q. Was it taken shortly before your departure from China en route to the United States?

A. Yes.

The Court: Is that the 1947 picture?

Mr. Hertogs: No, that is the 1950 picture, your Honor.

The Court: Oh, 1950.

Q. (By Mr. Hertogs): Now, I will show you Plaintiff's Exhibit No. 8 and ask if you have seen this picture before. A. Yes.

Q. And does your picture appear in there?

A. Yes.

Q. And can you identify the other individuals from right to left?

A. The first one on my right is my father. The second one is me. The third one is So Tak, the fourth one is the wife of So Tak. The fifth one is my step-mother. The sixth and last one is my god-sister.

Q. Do you know when and where this picture was taken?

A. It was taken on the date of So Tak's marriage.

Q. And where was it taken? [88]

A. It was taken in the photographer's

Q. In what city? A. In Canton City.

Q. I will show you Plaintiff's Exhibit No. 2 for

(Testimony of Chow Seng.)

identification and ask you if you have seen this picture before? A. Yes, I have seen it.

Q. And is your picture in there? A. Yes.

Q. And who is the other person?

A. She is my sister.

Q. And where is she now?

A. She is dead now.

Q. Do you know when and where this picture was taken? A. No, I can't recall.

Mr. Hertogs: I ask this picture be introduced in evidence, Your Honor.

The Court: All right.

The Clerk: Plaintiff's Exhibit 2 admitted and filed in evidence.

(Whereupon Plaintiff's Exhibit 2 for identification only was received in evidence.)

Q. (By Mr. Hertogs): Now, you stated you lived with your father, Chow Yit Quong, in China before you came to the United States. Now, how long did you live with him in China before you came to the United States? [89]

A. I can't tell you offhand. I can't recall how many years. It began the first year that my father went to China.

Q. Do you remember what year that was?

A. In 1947.

Q. Now, you state he went to China in 1947; you came to the United States in 1950. Did you live together with him from 1947 to 1950? A. Yes.

(Testimony of Chow Seng.)

Q. Did you live together in the same house?

A. Yes.

Q. Did you have your meals together?

A. Yes.

Q. Did you consider Chow Yit Quong to be your father? A. Yes.

Q. And did Chow Yit Quong consider you to be his son?

Mr. Hargreaves: Objection; asking for his opinion.

The Court: Well, did he consider him to be his son; the question is objectionable in that form. Sustained.

Q. (By Mr. Hertogs): Did Chow Yit Quong treat you as his son? A. Yes.

Q. Did Chow Yit Quong identify you to other individuals as his son?

Mr. Hargreaves: Objection. I believe Chow Yit Quong would be the one to testify as to that.

The Court: No, overruled. I suppose he means introduced [90] him, when you say "identified him."

Mr. Hertogs: Yes.

A. Yes.

Q. (By Mr. Hertogs): Did you introduce Chow Yit Quong to your friends as your father?

A. Yes.

Q. Did you and Chow Yit Quong speak to one another as father and son? A. Yes.

Q. Do you have a brother by the name of Chow Sam? A. Yes.

Q. And where is Chow Sam now?

(Testimony of Chow Seng.)

A. He is in this courtroom.

Q. And when did Chow Sam come to the United States? A. I can't remember the date.

Q. Do you remember approximately what year?

A. I don't know whether it is 1940 or 1941.

Q. Was it some date prior to World War II?

A. That I don't know.

Q. Do you actually remember much of what took place prior to the termination of World War II?

Mr. Hargreaves: What does that mean by the "termination of World War II"?

The Court: You mean prior to 1945?

Mr. Hertogs: Prior to 1945, your [91] Honor.

The Court: Well, he was about 11 years old.

Mr. Hertogs: That is the reason.

The Court: He could remember something.

A. I don't remember clearly the events prior to that.

Q. (By Mr. Hertogs): What has been your physical condition during your residence in China?

A. Well, I am sick most of the time.

Mr. Hertogs: At this time, your Honor, this being a relationship question, I would like to ask Chow Yit Quong to step up here because of the similarity of appearance of these two individuals, which I would like to call to the Court's attention at this time.

The Court: I don't get what you——

Mr. Hertogs: I would like to have Mr. Chow Yit Quong step up here and stand next to the plaintiff, because of the similarity of physical appear-

(Testimony of Chow Seng.)

ance. I would like to call it to the Court's attention.

Mr. Hargreaves: I will object to that, your Honor. That is not proof of relationship.

The Court: Well, I have observed them both. I don't know how you are going to make that a record fact in any way.

Mr. Hertogs: I am not so much interested in making it a record fact as pointing it out to the Court at this time, because of the very, very similar facial characteristics of these two individuals. [92]

The Court: Do you just want him to come up and stand here?

Mr. Hertogs: Yes.

The Court: All right.

Mr. Hertogs: Will you come up here, Mr. Chow?

(Whereupon Chow Yit Quong arose and came forward, facing Court, standing next to the witness.)

Mr. Hertogs: I think, if the Court will look, there are very, very similar markings on this father and son. The forehead and nose and the eyes and lips and chin and everything else are practically identical.

Mr. Hargreaves: Will you turn them around, counsel?

(Chow Yit Quong and witness turned around in place.)

The Court: Well, I am not an expert in this field, so I can't draw much from that.

(Testimony of Chow Seng.)

Mr. Hertogs: I have no further questions, your Honor.

Mr. Hargreaves: I will probably take quite a little time, your Honor.

The Court: Well, supposing we go ahead until three o'clock and then we will take a recess until tomorrow morning.

Mr. Hargreaves: All right.

Cross-Examination

By Mr. Hargreaves:

Q. Now I show you Exhibit No. 8 which you have previously identified. That was taken in 1947, is that correct? [93] A. Yes.

Q. I show you Exhibit No. 1. Do you recognize this picture? A. Yes.

Q. Was that taken in 1950?

A. That I don't know. I am not clear on the date.

Q. Isn't it a fact that both of these photographs were taken after arrangements had been commenced for you to come to the United States?

A. That I don't know.

Q. When did you first contact the American Consul? A. No, I don't recall the date.

The Court: "I don't" what?

The Interpreter: "I don't recall the date."

Q. (By Mr. Hargreaves): Was it before or after you attended this wedding?

(Testimony of Chow Seng.)

A. Well, this picture was taken prior to my contact with the American Consulate.

Q. Where did you first contact the American Consul, in Canton City?

A. At the Hong Kong Consulate.

Q. Was that before you went to Canton City from Quei Yung City?

A. That was when I was living in Canton City.

Mr. Hargreaves: Ask this be marked for identification.

The Clerk: Defendant's Exhibit B marked for identification. [94]

(Whereupon document referred to below was marked Defendant's Exhibit B for identification only.)

Mr. Hertogs: May I see it?

(Conversation between Messrs. Hargreaves and Hertogs out of hearing of the reporter.)

Q. (By Mr. Hargreaves): I now show you Defendant's Exhibit B, which has been marked for identification, and direct your attention to an affidavit which appears together with a photograph, and ask you if this is your photograph?

A. Yes, that is me.

Q. Who is the other person?

A. That is my father.

Q. Whose signature appears at the bottom of this affidavit?

A. That is my father's signature.

(Testimony of Chow Seng.)

Q. I notice that this affidavit was sworn to on September the 17th, 1946, and sent to the American Consul. Therefore, it would appear that arrangements had been commenced before that photograph was taken in Canton City, isn't that a fact?

The Court: Well, of course, that is a matter of record. This witness would only have been about ten years old in '46.

A. That I don't know.

Mr. Hargreaves: I just wanted to point out, your Honor, that these photographs were taken after the arrangements had been started.

The Court: Well, apparently there is no question about [95] that, according to the record.

Mr. Hargreaves: I would like at this time to have Defendant's Exhibit B put into evidence.

The Court: Very well.

The Clerk: Defendant's Exhibit B admitted into evidence.

(Whereupon Defendant's Exhibit B for identification only was received in evidence.)

The Court: Let me ask you, Mr. Hertogs, you have other witnesses or will this make your affirmative case?

Mr. Hertogs: No, I have one more witness, your Honor.

The Court: And the Government has some witnesses, too?

Mr. Hargreaves: I don't expect any unless I have difficulty in some of the records being put into evidence.

The Court: Well, then, we could probably finish the matter tomorrow?

Mr. Hargreaves: Oh, yes.

Mr. Hertogs: I believe so, your Honor.

The Court: I am sorry that I have to adjourn a little bit earlier today, but we might possibly have finished today otherwise.

Mr. Hertogs: I don't know how long counsel expects to cross-examine the witness, but——

The Court: Perhaps we had better figure tomorrow and then we will have more time.

Mr. Hertogs: I have one witness who has—who is the [96] prior landed brother.

The Court: Well, then, I think to give you a chance to get your examination in shape, we will recess until tomorrow morning at ten o'clock.

Mr. Hertogs: Ten o'clock, yes, your Honor.

(Whereupon an adjournment was taken until ten o'clock tomorrow morning, Tuesday, December 9, 1952.) [96-A]

Tuesday, December 9, 1952—10:00 A.M.

The Clerk: Chow Yit Quong vs. McGrath, further trial.

Mr. Hertogs: Ready, your Honor.

Mr. Hargreaves: If the Court please, before I start cross-examination of the plaintiff, I noted your interest in the general pattern of these cases as to the boys and girls claimed, and I thought the Court might be interested in a little survey which was made by the Immigration Service back in 1929. I

know it is not, that is, it doesn't pertain to this specific case, but it is of general interest. At that time, 1929, the Immigration Service surveyed 2,337 claims and then a second survey of 8,509. In each case it came out 92 per cent boys and 8 per cent girls, and, of course, that is a little significant with this case.

The Court: Well, now, those who applied to come into this country?

Mr. Hargreaves: That's right, that is births in China. In both instances, both surveys, it showed that the claims were 92 per cent, 8 per cent girls, and, of course, that corresponds very closely to this case, where they have 90 per cent to 10 per cent. If the Court is interested, I would be glad to put this into evidence.

The Court: Well, you can leave it with the clerk.

Mr. Hargreaves: All right. [97]

Mr. Hertogs: I make a motion to strike the last remarks of counsel, your Honor, as immaterial, irrelevant, incompetent to the issues here, and constituting statistics remote from the present date.

The Court: Well, there is no doubt that—this is 1929, did you say?

Mr. Hargreaves: Yes, it was 1929, your Honor; it does not pertain to this case.

The Court: It is too remote in point of time. I don't know whether it is remote in point of fact or not, but at any rate, unless there was some more modern statistics of some kind, why, I doubt whether the matter would be of any particular moment—this having happened in 1929.

Mr. Hertogs: I still would like to move to strike the remarks, your Honor.

Mr. Hargreaves: Of course, your Honor, this was just brought to the Court's attention due to your Honor's remarks about the various claims, and the 1929 does go back to the time that the guardian ad litem was making the claims that are before the Court today.

The Court: Well, the remarks are there in the record and they are not altogether inconsistent with some of the discussion that we had in the matter. But what bearing it might have on this case, at the moment, I can't see. This is not a jury, and whether the remarks are stricken or not they [98] still remain in the record—even if they are stricken. They are there. So your motion is there and I simply don't feel that there is any need to act on it, because I have already heard the remarks.

Well, let's proceed with the evidence.

Mr. Hargreaves: Cross-examination of the plaintiff, please.

CHOW SENG

resumed the stand, and, having been previously sworn, testified further as follows:

Cross-Examination (Continued)

By Mr. Hargreaves:

Q. Mr. Fong, would you please advise the plaintiff he is still under oath?

(Interpreter to witness.)

(Testimony of Chow Seng.)

Q. (By Mr. Hargreaves): Do you recall testifying before the Immigration and Naturalization Service upon your arrival in San Francisco?

A. Yes, I did have.

Q. How many times has your father been married? A. Twice.

Q. When did you first see his second wife?

A. In my home village.

The Court: When, the question was.

A. In 1947.

Q. (By Mr. Hargreaves): Have you ever testified that you [99] first saw your alleged step-mother for the first time in Canton City?

A. I don't recall I have ever made that statement, but I know that I saw my step-mother for the first time in my home village.

Q. Where was your father married the second time? A. In Canton City.

Q. Were you present at the wedding?

A. No.

Q. Was there a wedding feast held in Canton City after the marriage? A. Yes.

Q. Were you present at that wedding feast in Canton City? A. No, I was not present.

Q. Have you previously testified at any time that you were present at that wedding feast in Canton City? A. I don't recall.

Mr. Hargreaves: I would like to direct the Court's attention to Interrogatory No. 4, in which the plaintiff admits having so testified before the Immigration Service. I am not sure of procedure

(Testimony of Chow Seng.)

here, your Honor. It will be necessary for me to introduce the Interrogatories? Or are they considered part of the pleadings?

The Court: Well, you have the right to refer to the answers to the interrogatories. Some lawyers offer the [100] answers to the interrogatories and the interrogatories into evidence. They are part of the record in the case.

Mr. Hargreaves: They are part of the pleadings. I wasn't quite sure, your Honor.

The Court: And, of course, the Court will take notice of anything that is part of the record in the case.

Mr. Hargreaves: Well, of course, I am only using them for the specific purpose of impeachment.

Mr. Hertogs: That is what I wanted to know, your Honor. It is being admitted solely for the purpose of impeachment; then I have no objections.

The Court: Very well.

Q. (By Mr. Hargreaves): Have you ever resided in Kwantung, Po Village?

A. Yes, I have.

Q. For what period? A. In 1947.

Q. How long were you in Kwantung, Po Village, at that time? A. About two weeks.

Q. Had you ever been in Kwantung, Po Village, prior to that time?

A. When I was very small.

Q. Have you ever made a statement to any per-

(Testimony of Chow Seng.)

son at any time that you had never been in Kwantung, Po Village?

A. I can't remember. [101]

Q. Have you ever made a statement to any person at any time that you didn't even remember that village?

A. I don't recall making any such statement.

Q. On September the 20th, 1950, you appeared before Inspector Pauson of the Immigration Service, at which time you testified? Do you recall that incident?

A. I don't remember the dates.

Q. I have here a certified copy of the testimony and ask you if this is your signature?

A. Yes, that is my signature.

Q. The question appears on page 6, "When was the last time you were in Kwantung, Po Village." The answer appears, "I don't even remember that village." Did you make that answer?

A. I am not clear on that.

Mr. Hargreaves: Ask that the certified copy of the record be marked for identification.

The Clerk: Defendant's Exhibit C marked for identification.

(Whereupon record referred to above was marked Defendant's Exhibit C for identification only.)

Mr. Hargreaves: At this time, your Honor, I would like to offer this certified record into evidence for the purpose of impeachment.

Mr. Hertogs: I object, your Honor, on the

(Testimony of Chow Seng.)

grounds it is hearsay. This is a trial de novo, that is not admissible in [102] evidence. They have not proved the statement, the man has denied it; they must prove that statement themselves by other competent evidence. The statement itself is not admissible, the statement they are attempting to introduce is a complete statement and is not limited solely to this one question which they are raising at this time.

The Court: Well, the witness has answered that he doesn't recall, is that right?

(Record read.)

Mr. Hargreaves: The purpose for which I wish to introduce this document, your Honor, the fact that the witness has testified that he was in Kwantung, Po Village, for a period of two weeks, he has also testified that he was there when he was younger. Now, during the course of this prior testimony the record indicates that he stated he didn't even remember the village. Now that certainly goes not only to his credibility but admission against interest at the prior hearing.

The Court: Yes. Well, I think that may be, but I don't know what else is in that record, Mr. Hargreaves. You offered the whole record.

Mr. Hargreaves: I was offering it for the limited purpose of those statements.

The Court: Oh, well, if that is the case——

Mr. Hertogs: He has read the statements in the record, [103] your Honor.

(Testimony of Chow Seng.)

The Court: Well, you have it marked for identification and you have read statements into evidence, so you have your record on that.

Mr. Hargreaves: Yes, I mean, I just want the Court to understand what those statements were.

The Court: Well, you have read it.

Mr. Hargreaves: Yes, I have read them in the record.

The Court: You have read it in the record, what you want?

Mr. Hargreaves: Yes, sir.

The Court: All right, just leave it marked for identification, then, so there won't be any question as to the accuracy of the statements.

Mr. Hertogs: We question the accuracy of it, your Honor.

The Court: I beg pardon?

Mr. Hertogs: We do question the accuracy of it. I might state at this time, your Honor, they have propounded a number of interrogatories, as you can see from the record, in this particular case. All of the interrogatories which they have propounded deal with the discrepancies that arose during the entire examination of this boy, not only by the Board of Special Inquiry but on primary inspection, which is the document that you have there. Every single discrepancy that you can find in the Immigration Record is set forth in [104] full in the interrogatories. I have been very careful on these, I have gone over these things very thoroughly with these boys. We are not denying that he made a

(Testimony of Chow Seng.)

number of these statements. They were wrong. There is no doubt about it. He has admitted that they were wrong. But he has denied two parts and two parts only of those interrogatories, and I think that the burden is on the Government to show that he did answer those interrogatories as indicated in the record, because he says he does not recall answering those questions in that manner.

The Court: Well, he signed.

Mr. Hertogs: Yes, your Honor, but you can ask him——

Q. (By Mr. Hertogs): Were these questions and answers read back to you after they were typewritten? A. No.

Mr. Hertogs: Another thing, your Honor, is this, that when they signed the record, it is the policy of the Immigration and Naturalization Service to tell them, to tell these people, that the purpose of signing this document is to show they were present, not as to what is there, because otherwise these people in the past have asked them to read the entire record back. And that is practically impossible, due to the volume of business that they have. Therefore, when they sign this, that is an indication they were present, and that they did testify on that date. And this man admits that he appeared [105] and testified on that date.

The Court: Well, they have, I suppose—I notice here that there is a stenographer-interpreter who did this.

Mr. Hertogs: Yes, your Honor.

(Testimony of Chow Seng.)

The Court: Well, do you want her to be brought here to testify that her transcript is correct on that?

Mr. Hargreaves: Well, your Honor, I deliberately offered this in evidence without calling her. She is in the courtroom. However, the Immigration Service is presented with this problem, that in most of these cases there may be anywhere from three to five people or maybe six people that have to be called in order to actually identify a record. Some of those people are no longer with the service. And I believe, your Honor, that under the——

The Court: You say that the young lady who took this record is here?

Mr. Hargreaves: She is here, your Honor, but I hoped to obtain a ruling for future cases, because we are faced with a serious problem of attempting to bring in personnel who are no longer with the service.

The Court: Well, if this matter of the discrepancies, the alleged discrepancies, is important, you had better—when the time comes—put this young lady on the stand and have her testify as to the accuracy.

Mr. Hertogs: I will go along with him, your Honor. We [106] have admitted all but two things in this, and at this time, as I stated before, I have gone down very thoroughly with this boy on each one of them and he says he thinks he may have said that, and where he said and I told him the record indicated that he had said that, he wasn't sure whether he did or didn't, we have admitted it by the

(Testimony of Chow Seng.)

interrogatories. However, in the cases where he indicated to me that he did not feel that he made such a statement, we find it necessary to deny that that is a proper record.

The Court: Well, as long as the lady is here, put her on the witness stand, Mr. Hargreaves; I am not interested in making rulings on this matter that will govern future proceedings; as this is the precise issue in this case and it is of importance and the stenographer is here, she can testify as to it.

Mr. Hargreaves: All right, your Honor.

Q. (By Mr. Hargreaves): You have just now testified that you were in Kwantung, Po Village, for two weeks. Is that correct?

A. About two weeks.

Q. How large is Kwantung, Po Village?

A. Not very large.

Q. Approximately how many houses?

A. Four houses.

Q. Have you ever testified or stated to any person that [107] Kwantung, Po Village, consisted of approximately 30 houses? A. No.

Q. You are positive you never stated to any person at any time that Kwantung, Po Village, consisted of 30 odd houses?

A. I said there were three houses, not 30, and one was the ancestral hall.

Q. What is the Chinese word for three?

The Interpreter: "Sam."

Q. (By Mr. Hargreaves): What is the Chinese word for 30?

(Testimony of Chow Seng.)

The Interpreter: "Samsup."

Q. (By Mr. Hargreaves): Is there any reason why an interpreter would be confused between the word "Sam" and "Samsup"?

A. Well, I don't know. Maybe he misunderstood me.

Q. You have already stated that you appeared and testified before the Immigration Service. I direct your attention to page 26 of the VSI Report and ask if this is your signature? A. Yes.

Mr. Hertogs: What page?

Mr. Hargreaves: 26 was the signature.

The Court: That is contained in the interrogatories, isn't it?

Mr. Hargreaves: He denies, your Honor, that he said——

The Court: What?

Mr. Hertogs: That is the second point.

Mr. Hargreaves: He denies that he stated there were 30 [108] houses in the village.

The Court: Now you want to offer it? Read it.

Mr. Hargreaves: Well, I can read the questions and answers into the record.

The Court: All right.

Mr. Hargreaves: Or I can offer it in the record for the limited purpose——

The Court: Well, why don't you have that particular testimony marked for identification and then read into the record the portion that you wish to offer?

Mr. Hargreaves: All right, your Honor. It has

(Testimony of Chow Seng.)

been marked for identification as Defendant's Exhibit A.

The Court: Oh, all right. Well, read your question.

Mr. Hargreaves: And on page 22 I would like to read the following questions and answers:

"Describe the Kwantung, Po Village, as it was when you claimed to have seen it in 1947."

Now this portion he admits: "It was raining and I couldn't go out. I don't know how many houses there were or how many rows of houses."

"How many days did you stay in Kwantung, Po Village, in 1947?"

"About ten days."

"If you were actually in Kwantung, Po Village, for about ten days, you should be able to give [109] us a fairly good idea of how that village was laid out.

Will you state how many houses in all you saw in that village in 1947?

"30 odd houses."

Now that is the one question he does not admit making, or answer, rather.

The Court: Now is that taken by the same stenographer?

Mr. Hargreaves: Yes, by the same stenographer. There's a couple of other questions here that are very interesting, your Honor:

"And you say that the house in which you, your father and your step-mother lived in 1947 was about

(Testimony of Chow Seng.)

in the center of those 30 odd houses in Kwantung, Po Village?

“It was not exactly in the center, but it was near it.”

Now he admits making that statement.

“Is that house near the front or the rear of the village?

“I don’t know which side was considered the front and which side was considered the rear of the village.

“Were there houses in front and to the rear of the house in which your father and step-mother lived in Kwantung, Po Village, when you were there [110] in 1947?

“Yes.

“Were there houses on each side of the house in which you persons then stayed? A. Yes.”

Now he admits making those statements, the only question is as to the number.

Q. (By Mr. Hargreaves): During the time you were in Kwantung, Po Village, what were the sleeping arrangements?

A. I was sleeping in the house.

Q. Did you and your alleged father and step-mother sleep in the same house?

A. I slept in the old house.

Q. Where did your alleged father and step-mother sleep?

A. My father and step-mother slept in another house.

(Testimony of Chow Seng.)

Q. Have you ever testified or stated to any person that during your stay in Kwantung, Po Village, that you, your father and your mother, your step-mother rather, all slept in the same house?

A. I am not clear on that.

Q. Were you ever asked the question, "Did you sleep in the same house with your father and your step-mother each and every night while you folks stayed in Kwantung, Po Village, in 1947," and did you answer, "Yes" to that question?

A. I didn't say we were sleeping in the same house. [111]

Mr. Hargreaves: I would like to invite the Court's attention to Interrogatory No. 9, where he admits making that statement, your Honor.

The Court: Well——

Q. (By Mr. Hargreaves): What relatives do you have in Kwantung, Po Village?

A. I know there is a Mrs. Chow there.

Q. Does your father have any brothers or sisters?

A. None of them were living there.

Q. Please answer the question. Does your father have any brothers or sisters?

A. Yes.

Q. How many brothers or how many sisters?

A. Two, including my father.

Q. Two what?

A. My father had an older brother.

Q. What was his name?

A. Chow Seng Quong.

Q. Does he have any children?

A. Yes, he has.

(Testimony of Chow Seng.)

Q. How many children?

A. That I am not clear.

Q. Have you ever seen any of Chow Seng Quong's children? A. Yes, I have seen them.

Q. When and where? [112]

A. In Kwantung, Po Village.

Q. Who did you see in Kwantung, Po Village?

A. A Chow Yun, Chow Sun.

Q. Did you sleep in the same house with them during the time you were in Kwantung, Po Village? A. Yes.

Q. Have you ever stated to any person that you had never seen any of Chow Seng Quong's children? A. I am not clear on that.

Q. Did you ever state to any person that you did not know the names of any of his children?

A. I did tell somebody that I didn't remember it, but I do now.

Mr. Hargreaves: I would like to direct the Court's attention to Interrogatory No. 10, the latter portion, in which he admits making those statements.

Q. (By Mr. Hargreaves): What was the name of your blood mother?

A. Wong Suey Hong.

Q. When and where did she die?

A. As to the date, I don't remember. But she died in Kwantung, Po Village.

Q. Can you give the approximate date of her death?

(Testimony of Chow Seng.)

A. I believe it was the 32nd year of the Chinese Republic.

Mr. Hertogs: That is 1943, your Honor. [113]

Q. (By Mr. Hargreaves): Have you ever stated to any person that your mother passed away in Macao?

A. I am not clear on that.

Q. Were you asked the question at the time of your hearing before the Immigration Service's examiner, "Describe your blood mother," and did you answer, "Her name was Wong Suey Hong, she died in Macao in 1943."?

The Court: These have been denied?

Mr. Hargreaves: No, they are admitted.

Mr. Hertogs: They are admitted in the interrogatories, your Honor.

A. I don't remember.

The Court: How far is Macao from Kwantung. Po Village?

The Witness: Not very far.

The Court: Well, how far?

The Witness: I have to walk several hours, but I don't know the distance.

The Court: How far is Canton City from Kwantung, Po Village?

The Witness: About two days by boat.

The Court: Two days by boat.

Q. (By Mr. Hargreaves): Is it possible to actually walk from Macao to Kwantung, Po Village?

A. No.

Q. How long does it actually take to travel from Kwantung, [114] Po Village, to Macao or vice

(Testimony of Chow Seng.)

versa? A. Oh, that I don't know.

Q. Isn't it a fact that Kwantung, Po Village, is supposed to be in the Chung Shan District?

A. Yes.

Q. Do you have a sister?

A. Yes, I have a sister.

Q. Is she alive? A. No.

Q. When and where did she die?

A. She died in Kwantung, Po Village, but I don't remember the date.

Q. Where is she buried?

A. In Kwantung, Po.

Q. Where is your mother buried?

A. Kwantung, Po.

Q. Who died first, your mother or your sister?

A. My sister died first.

Q. Have you ever testified before any person that your sister died in Macao and was buried there?

A. I am not clear.

The Court: That is also included in the answers to the interrogatories?

Mr. Hargreaves: Yes, your Honor, that is admitted. I might also draw attention to his admitted testimony that he [115] testified that his father removed the body of his mother from Macao and reburied it in Kwantung, Po Village. He admits that statement.

Q. (By Mr. Hargreaves): Have you ever resided in Quei Yung City? A. Yes.

Q. Did your alleged father visit you there?

A. He did.

(Testimony of Chow Seng.)

Q. How long were you in Quei Yung City?

A. After my mother's death I went to live in Quei Yung until my father returned to China and took me to Canton City.

Q. During that time did you reside in one location or one residence in Quei Yung City?

A. I resided only in one residence.

Q. You stated that you moved to Quei Yung City when your mother died. Where were you living at that time?

A. I moved from Kwantung, Po, to Quei Yung.

Q. That is Kwantung, Po Village?

A. Yes.

Q. Can you describe the house in which you lived in Quei Yung City, a very general description?

A. It is a big house in three sections, that is, divided into three roofs.

Q. Are there three separate buildings?

A. It is all connected together. [116]

Q. Are there any lofts in any of those buildings?

A. Yes, there was a loft there.

Q. Did you ever state to anyone that there were no lofts in any of those rooms or buildings?

A. I believe somebody asked me about it, but I didn't know what a loft was.

Q. I will read you a question: "If someone were to say that there was a wooden loft in a premises at 58 Fat Yuen Road, Quei Yung City, while you lived there, and that there were several rooms in that wooden loft, what would you say?"

(Testimony of Chow Seng.)

“A. I would say there are none.”

Did you make that answer?

A. Well, I am not clear on that.

Mr. Hargreaves: I direct the Court's attention to Interrogatory No. 12 in which that statement is admitted.

Q. (By Mr. Hargreaves): You have stated that you were residing in Kwantung, Po Village, prior to the time you went to Quei Yung City and prior to your mother's death. How long had you been living there? A. Less than a year.

Q. Is that the same period which you stated previously that you resided in Kwantung, Po Village, for approximately eight months?

A. Yes.

Mr. Hargreaves: No further questions, your Honor. [117]

Redirect Examination

By Mr. Hertogs:

Q. Do you remember moving from Macao to Quei Yung City? A. I don't remember.

Q. Do you actually remember moving from Macao to Kwantung, Po Village, and then to Quei Yung City? A. I believe so.

Q. Do you remember actually moving and living in Kwantung, Po Village, shortly after or shortly before the death of your mother? A. Yes.

Q. Now you previously testified at the time of the Board of Special Inquiry hearing that your

(Testimony of Chow Seng.)

mother had died in Macao. Now why did you make that statement at that time?

Mr. Hargreaves: I think I will object to the question, your Honor, as self-serving—any explanation at this time when he makes an admission of the statements.

The Court: Well, I think the witness always has a right to make such explanation as he wishes of inconsistent statements, if he wishes to make any. Overruled.

A. When my mother died I was very small then and I had been sick most of the time, and when my father removed the body and we buried the bones at Kwantung, Po Village, that was the time that I knew she was buried in Kwantung, Po Village.

Q. Why did you testify that she had been—that she died [118] in Macao?

A. Well, the fact is she died in Kwantung, Po Village.

Q. Do you remember the death of your mother?

A. No, I don't remember.

Q. Now during the Board of Special Inquiry hearing conducted by the Immigration and Naturalization Service, in reply to a question as to whether or not you remembered even moving from Macao to Quei Yung City, you stated you did not remember at all. Now that is in conflict with the statement you have just made. Now are you testifying today from facts which have come to your knowledge

(Testimony of Chow Seng.)

subsequent to your release or are you testifying from facts of your own knowledge?

The Court: That is an awfully difficult question for the interpreter to put to him for him to answer. It takes a lawyer to answer that one.

Mr. Hertogs: It takes a lawyer to ask it, your Honor.

The Interpreter: Will you please read the question again?

The Court: I don't want to—but when he asks a person whether they are testifying of their own knowledge or—that is asking a legal question.

Mr. Hertogs: That is the difficulty we are confronted with.

The Court: Well, why don't you put the question in a simpler form?

Mr. Hertogs: All right. [119]

Q. (By Mr. Hertogs): You previously testified before the Immigration Service that you did not remember the trip from Macao to Quei Yung. Do you recall that statement?

A. I don't remember.

Q. Approximately how old were you at the time of the death of your mother?

A. I was very small.

Q. Do you remember?

The Court: That isn't any answer. He was about 10 or 11 years old.

Mr. Hertogs: About eight and a half, your Honor.

The Court: How old is he now?

(Testimony of Chow Seng.)

Mr. Hertogs: He was born in August of 1934 and the mother died in March or February—February or March of 1943, which would have made him——

The Court: Going on to nine years old.

Mr. Hertogs: Going on to nine years old.

Q. (By Mr. Hertogs): At the time you previously testified before the Immigration——

The Court: Well, of course, even at that age he should remember something about that.

Mr. Hertogs: I doubt that, your Honor.

The Court: In order that you may be sure about it, why don't you ask him again, counsel, if you want your record clear? Ask him if he has no recollection at all. [120]

Q. (By Mr. Hertogs): Do you have any recollection at all concerning the death of your sister and your mother—personal recollection?

A. I remember that when they died, why, I wasn't even permitted to be near them on account of their having contagious diseases.

The Court: Well, then, you do remember your mother and you remember the time she died?

The Witness: No, I don't remember.

Mr. Hertogs: I have no further questions, your Honor.

The Court: That's all of the witness?

Mr. Hargreaves: That's all for me, your Honor.

The Court: That's all.

(Witness excused.)

Mr. Hertogs: The witness we would like to call is Chow Sam, your Honor. Chow Sam.

The Court: Will the interpreter be needed?

Mr. Hertogs: I think so, your Honor. If we don't, we will have difficulty for the reporter.

CHOW SAM

called on behalf of the plaintiff; sworn.

The Clerk: Please have the witness state his name for the record.

A. (Through the Interpreter): Chow Sam.

Q. Please spell his name. C-h-o-w?— [121]

A. (Through the Interpreter): S-a-m.

(Answers given through interpreter except as otherwise noted.)

Direct Examination

By Mr. Hertogs:

Q. Are you a United States citizen?

A. Yes.

Q. Do you have any proof of your United States citizenship with you? A. Yes.

Mr. Hertogs: May I see it?

(Witness indicated back of courtroom.)

Mr. Hargreaves: I believe it is a matter of record, your Honor. We have already read into the record that he was admitted on an appeal after exclusion by a Board of Special Inquiry, as a citizen.

The Court: Is this the son?

(Testimony of Chow Sam.)

Mr. Hargreaves: This was the son that was excluded by the Board of Appeals and was admitted in San Francisco.

Mr. Hertogs: Will the Government stipulate that this boy was admitted to the United States as the son of Chow Yit Quong?

Mr. Hargreaves: I will stipulate the Commissioner of Immigration overruled the Board of Special Inquiry and admitted him as a citizen.

Mr. Hertogs: Based upon—— [122]

Mr. Hargreaves: I would not admit that he is a citizen.

Mr. Hertogs: Based upon his relationship to Chow Yit Quong?

Mr. Hargreaves: Yes.

Q. (By Mr. Hertogs): Where were you born?

A. China.

Q. What village? A. Kwantung, Po.

Q. And what was the date of your birth?

A. July 3rd, Chinese.

Q. July 3rd, Chinese? In what year?

A. (In English): 12 Chinese.

The Interpreter: Twelfth year of the Chinese Republic.

Mr. Hertogs: That would be August 14, 1923, your Honor, in American reckoning.

Q. (By Mr. Hertogs): What is the name of your father? A. Chow Yit Quong.

Q. And is he in the courtroom at this time?

A. Yes.

Q. And will you identify him, please?

(Testimony of Chow Sam.)

A. (Standing and pointing.)

Q. Right there? And what was the name of your mother? A. Wong Suey Hong.

Q. And did you have a brother by the name of Chow Seng? A. Yes. [123]

Q. And where was the said Chow Seng born?

A. In Canton.

Q. Canton. Do you recall the date of his birth?

A. No, I don't remember.

Q. Do you remember the year he was born?

A. Don't remember that.

Q. How old is he? A. He is 18.

Q. 18 years old. And he was born in Canton City?

A. Yes, Chow Seng was born in Canton City.

Q. And were you living with the family at that time, with your family? A. Yes, I guess.

Q. Now how long did you live with Chow Seng in China?

A. I think about six or seven years.

Q. Six or seven years. And did you live together? A. Yes, we lived together.

Q. Did you live in the same house?

A. Yes.

Q. Did you have your meals together?

A. Yes.

Q. Did you sleep together in the same house?

A. Yes, slept in the same house.

Q. Did Chow Yit Quong reside with you at that time? A. Yes. [124]

(Testimony of Chow Sam.)

Q. Did you and Chow Seng speak to one another as brothers? A. Yes.

Q. Did you introduce Chow Seng to your friends as your brother? A. Yes.

Q. Did your father, Chow Yit Quong, introduce Chow Seng to persons as his son?

Mr. Hargreaves: Well, object to that, your Honor.

The Court: What?

Mr. Hargreaves: Object to that. Chow Seng or Chow Yit Quong would be the best witness to testify as to what he did.

The Court: Well, overruled.

A. Yes.

Q. (By Mr. Hertogs): Did you treat this Chow Seng as your brother? A. Yes.

Q. Did Chow Yit Quong treat Chow Seng as his son? A. Yes.

Q. Is Chow Seng your blood brother?

A. Yes.

Q. Was Chow Seng born of your mother, Wong Suey Hong? A. Yes.

Q. Chow Yit Quong is the blood father of Chow Seng? A. Yes.

Mr. Hertogs: I have no further questions, your Honor. [125]

The Court: Well, we will take a brief recess for five minutes.

(Recess.)

(Testimony of Chow Sam.)

Cross-Examination

By Mr. Hargreaves:

Q. You have just testified your mother gave birth to Chow Seng. How do you know she did?

A. My mother told me.

Q. Were you present in the house at the time of the birth? A. Yes.

Q. When did you arrive the United States?

A. 1940.

Q. Who accompanied you to the United States?

A. My father and my brother, Chow Hing.

Q. Do you recall that you and your brother, Chow Hing, were excluded by the Immigration and then admitted on appeal; is that correct?

A. That's correct.

Q. Do you recall the grounds on which the exclusion was based as to your brother Chow Hing?

Mr. Hertogs: I object to the question, your Honor. It is incompetent, irrelevant and immaterial as to the question of identity as to this one, as to why a case was taken on appeal and reversed on appeal. The Government is seeking to get this record adverse—is trying to get adverse material to this defendant into the record here, which was overruled. [126]

The Court: Well, it may have some possible connection with the mother, but it is hard for me to determine at this moment, and it is not important whether he recalls it or not. It is a preliminary question, I take it. Overruled.

(Testimony of Chow Sam.)

The Interpreter: May I have the question again?

The Court: The question was whether he recalls the grounds upon which his brother, who arrived in 1940, was originally denied admission to the United States by the Immigration Department.

A. I believe it was on account of an age question.

Q. (By Mr. Hargreaves): Isn't it a fact that the United States Public Health Service had found by medical examination that Chow Hing was five to seven years younger than the age claimed?

A. Yes.

Q. Where have you resided since your entry into the United States? A. In San Francisco.

Q. Where has Chow Hing resided since his entry into the United States?

A. Well, he lives in San Francisco, until his entry in the Army.

Q. Did he reside continuously in your home in San Francisco until his entry in the Army?

A. Well, we lived together for about two or three years, [127] then on account of the limited space, we moved apart.

Q. Where did he live after the first two or three years, I mean Chow Hing?

A. Then he moved in with my father and I lived separately.

Q. Were you and Chow Hing and your father all residing together for the first two or three years?

A. Yes.

(Testimony of Chow Sam.)

Q. Then after the first two or three years you left; is that right? A. Yes.

Q. And where did you go?

A. Still in San Francisco.

Q. Who did you live with?

A. I lived by myself.

Q. Did Chow Hing continue to reside with your father? A. Yes.

Q. Did he reside continuously with your father until his entry into the Army? A. Yes.

Q. Did you visit your father's home during those years after you left until Chow Hing entered the Army? A. Yes.

Q. When did Chow Hing enter the Army?

A. Four or five years ago.

Q. Was it 1946? [128]

A. I think it was between '45 and '46.

Q. Isn't it a fact that Chow Hing did not reside with your father in San Francisco from May, 1943, until the time he entered the Army?

A. Yes, he was living at the Chung Mei Home.

Q. In other words, he was taken care of by the Chung Mei Home in El Cerrito from 1943 until the time he entered the Army and did not reside with your father; is that correct?

A. Yes, that's correct.

Q. Then neither of you have resided in the home of your father since two or three years after your entry; isn't that correct? A. Yes.

Mr. Hargreaves: No further questions, your Honor.

(Testimony of Chow Sam.)

Mr. Hertogs: Ask the Government to stipulate that the record of admission of Chow Hing at the time that his application for admission to San Francisco indicates that he claimed birth in China at Kwantung, Po Village, on July 29, 1927.

Mr. Hargreaves: That is correct.

Mr. Hertogs: And what is the date of his admission to the Army? You have it there.

Mr. Hargreaves: 1946.

Mr. Hertogs: 1946, your Honor—19 years old. Their records indicated he was supposed to have been five years [129] younger, but yet the Army took him.

Mr. Hargreaves: I might state also, your Honor, the Draft Board refused to take him because he was immature and had to take a certification from immigration records before he was admitted.

Redirect Examination

By Mr. Hertogs:

Q. How long did your brother Chow Hing serve in the Army?

A. He was drafted in the Army for about two years, and after he was discharged, he volunteered in again.

Q. How long did he stay in again when he volunteered? A. Two or three years.

Mr. Hertogs: I have no further questions, your Honor.

The Court: How old are you now? A. 29.

(Testimony of Chow Sam.)

Q. Where do you live now?

A. Number 644 Pacific Street, San Francisco.

Q. What is your occupation?

A. I am in the restaurant business and the grocery business.

Q. In San Francisco?

A. In San Francisco.

Q. How long have you been in that business?

A. On account of my health I am not doing anything now, but I have been in the restaurant business for four or five years and most of the other time I am a groceryman. [130]

Q. How long have you been doing nothing?

A. About three months.

Q. Take care of yourself, do you—support yourself?

A. Yes.

Q. Are you married?

A. No.

Q. Have you ever been married?

A. No.

Mr. Hertogs: I have another question I would like to ask, your Honor.

Redirect Examination

(Resumed)

By Mr. Hertogs:

Q. Now——

The Court: What is the name of his other brother?

Mr. Hertogs: Chow Hing.

The Court: Has your brother Chow Hing—is he married?

A. No.

Q. Has he ever been married?

A. No.

(Testimony of Chow Sam.)

Q. (By Mr. Hertogs): I will show you Plaintiff's Exhibit No. 2 and ask you if you can identify those individuals? A. Yes, I do.

Q. Who are they from right to left?

A. The one on the right is Chow Seng and the other is my sister, Chow Soo. [131]

Q. And is Chow Seng present in the courtroom at this time? A. Yes.

Q. Now, calling your attention to the picture of Chow Seng, does this boy look like the boy that you last knew in China before your entry to the United States as Chow Seng? A. Yes.

Q. He looked like this boy, is that correct?

A. Yes.

Q. And you are referring to the boy that was born of your mother in about 1934? A. Yes.

Mr. Hertogs: I have no further questions, your Honor.

The Court: How old were you when you came to the United States?

A. 17 years old.

Q. How many brothers did you have?

A. Nine brothers and one sister.

Q. Do you remember Chow Yit Quong coming over to China when you were a boy there?

The Interpreter: Coming to the United States, you mean?

The Court: No, no, I say, you remember Chow Yit Quong coming over to China when you were a boy there? A. No, I don't remember.

Q. Don't remember that? What year did you come to the United States? [132] A. 1940.

(Testimony of Chow Sam.)

Q. Well, you came over—you said you came over with Chow Yit Quong.

A. I remember the events when my father went to China and brought me over.

Q. Well, you remember your father being in China at that time? A. Yes.

Q. What did your father do when he came over to China? A. No, he has nothing to do.

Q. Didn't do anything?

A. No, didn't do any work.

Q. Did your mother do any work?

A. The usual housework.

Q. Any of the boys—did he or his brothers do any work? A. No, doing nothing.

Q. How did they live?

A. Well, we live on our father.

Q. They lived on a farm?

The Interpreter: No, on the father.

The Court: On the father? All right. Anything else?

Mr. Hertogs: No, your Honor.

The Court: Anything else?

Mr. Hargreaves: No, your Honor.

The Court: That's all. [133]

(Witness excused.)

Mr. Hertogs: We have no further witnesses, your Honor.

Mr. Hargreaves: If the Court please, I would like to call Mrs. Fong at this time to identify the record.

JENNIE L. FONG

called on behalf of the defendant, sworn.

The Clerk: Will you please state your full name to the Court?

A. Jennie L. Fong.

Direct Examination

By Mr. Hargreaves:

Q. Mrs. Fong, what is your occupation?

A. I am employed as a stenographer-interpreter with the Immigration Service.

Q. How long have you been so employed?

A. Since January 23rd, 1950.

Q. Have you qualified under the Civil Service examination as a stenographer? A. Yes.

Q. Are you also qualified as an interpreter?

A. Yes.

Q. In what language?

A. In Toy-shan dialect and Canton City dialect.

Q. Those dialects? A. Chinese. [134]

Q. You mean in Chinese? A. Yes.

Q. Now, what method is used by the Immigration Service in recording testimony?

A. I immediately type down all the questions as they are asked and all the answers as they are given to me.

Q. You mean it is taken down directly on the typewriter? A. Yes.

Q. As the questions are asked and answered—it is not taken in shorthand, is that correct?

A. Yes, that's correct.

Q. I now show you a certified file of the Immi-

(Testimony of Jennie L. Fong.)

gration Service which has been marked Defendant's Exhibit C for identification and ask you if you recognize it?

A. The signature appearing on page 6 is my signature.

Q. You say that this is your signature on page 6?

A. That's right.

Q. This indicates that you did appear at the hearing, is that correct? A. Yes.

Q. I notice that on the first page it shows "Stenographer, Jennie L. Fong," is that correct?

A. Yes.

Q. Do you actually recall the questions and answers which were given during the course of this hearing? [135] A. No.

Q. In other words, you remember that you were there, but you can't say what questions were actually asked and answered, is that correct?

A. Yes, that's correct.

Q. Was it made in the regular course of business?

The Court: You took them down, though?

The Witness: I did.

The Court: You took the questions down in English and the answers down in English after they had been interpreted?

The Witness: That's correct.

The Court: From the Chinese language into the English language?

The Witness: Yes.

Mr. Hargreaves: In other words, your Honor,

(Testimony of Jennie L. Fong.)

she does this every day of the year, and it is impossible for her to remember the exact questions and answers that were given.

The Court: Well, ask her whether or not to the best of her recollection she did or did not transcribe these questions and answers correctly—answers given by the witness.

Q. (By Mr. Hargreaves): Can you answer that question of the Court's? A. Yes, I did.

Q. Is this the original record?

A. Yes. [136]

Q. Now, you stated that you also understand the Chinese language and have qualified as an interpreter. If the interpreter himself, who was used at this hearing, had made an error, you would have been in a position to have noticed it, isn't that right?

A. Yes, I would have.

Mr. Hargreaves: I have no further questions, your Honor.

Mr. Hertogs: I have one or two, your Honor.

Cross-Examination

By Mr. Hertogs:

Q. This record indicates on page 1 that the interpreter at this hearing was Thomas H. Gee, is that correct? A. Yes.

Q. That means that the questions were propounded by the examining officer to the witness through an interpreter and that that interpreter was Thomas Gee, is that correct?

A. That's right.

Q. And the answers that you recorded were an-

(Testimony of Jennie L. Fong.)

swers that were given by the witness to Thomas Gee, Thomas Gee translated it into the English and you recorded what Thomas Gee said in English, is that correct? A. That's correct.

Q. Then actually what you wrote down would be the English version of the answer as given by the interpreter? A. That's right. [137]

Mr. Hertogs: I have no further questions, your Honor.

The Court: What was that question and answer about the three and 30 there?

Mr. Hargreaves: This one here, your Honor, is—regarding that he didn't even remember Kwantung, Po Village.

The Court: No, no, I mean, this part of the record here in which the witness was asked how many houses there are in the village.

Mr. Hargreaves: That is in the other record, your Honor. That is in the V.S.I. record, your Honor. This is the primary statement.

The Court: What dialect was this done in, do you know?

Mr. Hargreaves: Cantonese, your Honor.

The Court: All right, what is the Chinese word for three—what is the Cantonese for the word three?

The Witness: Sam.

The Court: And what is it for thirty?

The Witness: Sam sup.

The Court: Sam sup?

The Witness: Hm-hm.

The Court: How would you spell that in English,

(Testimony of Jennie L. Fong.)

how would you try to phonetically put it into English?

The Witness: Well, it could be sup or sop.

Mr. Hertogs: Sam is usually spelled s-o-m?

Mr. Hargreaves: S-o-m. [138]

The Court: All right.

Mr. Hargreaves: I would like to also, your Honor, identify the Board of Special Inquiry——

Mr. Hertogs: I will stipulate that testimony would be the same as to the Board of Special Inquiry, your Honor.

Mr. Hargreaves: She also typed the Board of Special Inquiry hearing.

The Court: Very well.

Mr. Hargreaves: Any further questions?

Mr. Hertogs: No further questions.

The Court: That's all.

(Witness excused.)

Mr. Hargreaves: I believe, your Honor, I should now again offer these records into evidence.

Mr. Hertogs: I object, your Honor, on the same grounds as previously, that such records are not admissible.

The Court: Well, they may be only admitted to the extent that they are impeaching, that's all.

Mr. Hargreaves: That's all, your Honor, and for the limited purpose of those specific questions which he denied.

Mr. Hertogs: Which have already been read into the record.

The Court: Well, so the record will be clear, they may be admitted for that particular and special purpose and directed to those special questions and answers that are set [139] forth in the interrogatories and the answers to the interrogatories.

Mr. Hertogs: You mean as to the denial?

The Court: That's right.

The Clerk: That's A and C both?

Mr. Hargreaves: Yes, A and C.

The Clerk: Defendant's Exhibits A and C admitted as limited.

(Whereupon Defendant's Exhibits A and C for identification only were received into evidence as limited above.)

Mr. Hargreaves: I have no further witnesses, your Honor.

The Court: The evidence is concluded in the case?

Mr. Hargreaves: Yes, your Honor.

The Court: On both sides?

Mr. Hertogs: Yes, your Honor.

At this time, your Honor, in summation, I would like to state that at the time of the Board of Special Inquiry, at the time of the original examination by the preliminary examiner before the Immigration and Naturalization Service, this plaintiff was not represented by present counsel. If he had been represented by present counsel at that time, I definitely would have asked for a reopened hearing in order that the documentary evidence which we have offered into evidence here before the Court, and

the witnesses which we have presented before the Court, would have been introduced [140] and would have been given proper consideration by the Immigration and Naturalization Service. The hearing conducted there was not complete; it is an unfortunate situation. The pictures which have been presented in evidence before the Court were not introduced, were not even shown to the Immigration and Naturalization Service.

The tax returns which we have introduced as evidence, which show the consistent claims of the father for a boy named Chow Seng, were not introduced and given consideration by the Immigration and Naturalization Service. No effort was made, the father was not even told that he should attempt to have his prior landed sons appear and testify as witnesses in behalf of this plaintiff.

In addition, here he had a friend who was in China who was present and who saw this boy in his own home in China, who could have likewise testified as to this relationship. Unfortunately none of that evidence was given consideration at that time. It was not until this case was denied by the Immigration and Naturalization Service and this boy was about to be removed from the United States that this man came to see me.

I took one look at the record, those are the things which we have admitted here and which have not been denied to the interrogatories, those discrepancies. I told the man that [141] those discrepancies looked and appeared to be serious to me. I told him that I didn't think that there was a chance

to win a case. I refused to take it. He came back to me a second time and I still refused to take this case. He came back a third time and I still refused to take it. The man pleaded with me to come over and have a talk with him and his son over in the detention facilities of the Immigration and Naturalization Service. I made a trip to the Immigration and Naturalization Service with this man, I saw this man and this boy together. I saw the greetings of that man and that boy and I was satisfied concerning this relationship. I didn't care what the record showed. I said, "Now let's find how we can establish this claim. I am satisfied beyond any doubt that this is your boy and your bona fide son." I took the man back to the office and we sat down. We went into this record very thoroughly.

There was neglect; I can't explain these discrepancies, I don't know how they can be explained, except for the simple and possible reason that this boy was a minor at the time of the occurrences which are related in this record.

In the Board of Special Inquiry hearing this boy testified that he does not recall ever moving from Macao to Quei Yang. That was when he was approximately eight and a half, possibly nine years of age. He lived in Quei Yang from the time of the death of his mother until the father went to China for the [142] specific purpose of bringing him back to the United States, and he remained in China until about 1950, at which time he was finally

successful in securing a documentation from the American Consulate General in Hong Kong.

Yes, there are a number of discrepancies. We are not denying them. From the original record. They are admitted in the interrogatories. This boy has told me he doesn't definitely remember, but I have read him the record and I have told him that the record indicates such and such and I believe that under those circumstances there is no reason that he—to doubt the authenticity of the record statements.

I stated to your Honor that in this particular case this father was present in China at the time of the birth of this individual. Likewise his prior landed, older brother, who has testified as a witness, Chow Sam, was present at that time. The father was present in China, not only at the time of the birth of this individual, but was present in China for a number of years subsequent to that time, until the early part of 1939, at which time this boy would have been approximately four and a half years of age. Subsequent to the father's return to the United States he went back to China and brought to the United States these two prior landed sons, and he was in China at that time for a period of approximately one year in order to obtain documentation. During that time, likewise, he saw this boy in China. He had an opportunity to view this boy from [143] the time of his birth until he was approximately four and a half years of age, and then again he saw him at the time he was five, he saw him from the time he was five until he was six.

We have introduced here as an exhibit a small picture of a boy and a girl which was taken some time subsequent to the father's return to the United States. The picture of that boy has been identified as the same boy who he last saw in China before his return to the United States. Then the father returns to China in the latter part of 1946, December, to be exact. He immediately goes to a far distant place and brings this boy down to a locality close in proximity to an American Consulate and then he attempts to bring him to the United States.

The Government has referred to it in one of their cases, where the man prepared an affidavit, made the trips specifically for the purpose of bringing this boy to the United States. Then he lived with this boy during all the intervening years while he was waiting for documentation by the American Consulate. Fortunately we have a picture taken in 1947, taken at a time of the marriage of this So Tak to a Chinese citizen. Now looking at that picture, at that time, that picture being taken in 1947, the passport indicates the man returned to the United States in 1947, he returned with his wife, and naturally the picture must have been taken in very close proximity to the [144] date of his return, so that would place it in about July or August of 1947. At that time this boy should have been 13 years of age. You look at that picture of that boy and he looks and appears immature, for the age claimed. Naturally we had devastation, lack of proper food, malnutrition and a number of other circumstances that took place in China during the

intervening years. But you look at that picture taken in 1947 and you look back at the picture which was taken just subsequent to the father's return to the United States in 1940, and there is no doubt that they are one and the same individual.

Now prior to returning to the United States after securing documentation from the American Consulate, the father had another family picture taken, which has been introduced into the record. This picture likewise shows the father with the boy and with the stepmother. I state that if we look at the pictures that were taken in 1950, look at the picture taken in 1947, the picture which probably was taken in the latter part of 1950, or the early part of 1951, we will see a picture of one and the same boy. And if we look at the boy who was here and who has testified before this Court today, we will see that he is the same individual as the person whose pictures have been introduced as evidence in his behalf.

We have a statement of the father that this boy was actually born of his wife, and that he was present at that time. We have the statement of a prior landed son, and I don't [145] care whether he was admitted on an appeal or otherwise, but it is a concession by the proper administrative authority that he was a citizen of the United States and that he acquired such citizenship based upon his relationship to Chow Yit Quong, who is an admitted United States citizen.

Now Chow Sam has stated that he was likewise in China at the time of the birth of this boy, that this boy was born of his mother, that Chow Yit

Quong is the father and that the boy lived with them in the same house, slept with them in the same house, had meals with them in the same house in China from the time of his birth until the time of Chow Sam's departure to the United States in about 1940. He has stated that the picture of this boy, which appears on Exhibit No. 1—or Exhibit No. 2, pardon me—is the same boy that he last saw in his own home in China prior to his departure to the United States in 1940; and naturally the other pictures, when taken into consideration with this Exhibit No. 2, show the same boy appearing throughout as a member of this family.

The tax returns which we have submitted show that this father has consistently stated that he has had a boy named Chow Seng. There is no evidence introduced on the part of the Government to overcome the claims of the plaintiff in this case. All of the Government evidence has been admitted for the purpose of impeachment of the witness Chow Seng. Impeachment of what? Impeachment of his testimony given concerning [146] facts which took place during his early minority. Occurrences which would be frightening to the ordinary minor child. The record shows that this boy was approximately eight and a half to eight years and eight months of age at the time of the death of his mother. And I know of personal experience that you do not recall all of the circumstances arising from such a situation when you are of that age. My mother passed away when I was nine, and I couldn't tell you any more about it than this boy. I couldn't

definitely tell you what transpired for a considerable number of years prior to that time. I couldn't tell you what transpired for at least two or three years subsequent to that time. The mental reaction of a minor child on losing two members of his family at the same time would naturally cause a mental block and he would not be able to testify concerning any facts that took place during that time.

As to the occurrences which took place subsequent to this father's return to China in 1946, the only explanation that I can find as to those discrepancies is that this boy, who was then approximately 12 years of age, or 12 and a half years of age, was so excited from moving from Quei Yung, which is way up in the mountains—it is a considerable distance, five days traveling distance from the Canton area—coming from there down to Hong Kong, to Canton, to the village, back to Canton, attending a feast in the village, knowing all about the marriage of his father, hearing all about the marriage of [147] his father, living together with the father and with the stepmother for a considerable number of years after that, and at the same time, within a few months attending a wedding of another individual, a witness who appeared here, So Tak, going to his feast, seeing his wedding, and a boy of that age could become so confused over the facts that he could not readily identify them as to whether they were coming from his own knowledge or whether they were facts which were placed in his knowledge by other individuals.

I state, your Honor, in this case that I am so well satisfied of the relationship, in this particular case,

that this boy is a bona fide, lawful blood son of Chow Yit Quong, I think it is one of the best cases that I have ever seen. I know that the discrepancies may indicate otherwise, but I believe if the Court would take a look at these individuals, as your Honor did yesterday, and would take a look at this father and take a look at this boy, that you would see such a similarity that, coupled with the testimony of this record, that it would be impossible to do other than enter judgment for the plaintiff.

Mr. Hargreaves: If the Court please, I am afraid that I do not quite agree with counsel that this is one of the best cases that he has ever seen. I have seen many better cases, hundreds of them, admitted over at the Immigration Service, and I have seen many other cases such as these which were [148] denied. He is satisfied that it is a bona fide case. I am not. I have seen this pattern time and time again with the same result. I would like to remind the Court once more of those presumptions which I mentioned at the beginning, the presumptions of alienage, a presumption that the Ninth Circuit says the person himself is an exhibit, his speech, his manner. The Court observed him on the stand. He appears to be Chinese, not American. And he must overcome that presumption by strong, clear evidence.

Counsel takes exception to my statement that he was a naturalized citizen. Those were the words of the Supreme Court. However, if counsel prefers, we might say that he was, if a citizen at all, a citi-

zen whose citizenship was a grant of Congress. He is not born. He admits that he was born in a foreign country and therefore he must be presumed to be an alien.

Counsel has also called attention to the Nationality Act, which states that there are only two types of citizens, those born in the United States, or those, rather, that are native born, who acquire citizenship at birth, and those who are naturalized. However, that Nationality Act was passed long after the alleged birth of the plaintiff, and in addition, it cannot change the Constitution.

Speaking of the testimony, the document which was presented, counsel has laid great stress on Exhibit No. 2, [149] which is a photograph of a small boy and a small girl. Now personally I cannot identify who these persons are, and I don't believe that the Court can. It is just a picture of a small boy. Now if we assume that it is the plaintiff, there is no connection between this photograph and his alleged father. It doesn't prove anything. We don't know who this girl is. And that is the only evidence which goes back beyond the time when he first attempted to make arrangements to come to the United States. Since that photograph, or since the time of his application, we have nothing. I mean, your Honor, that prior to the time of his application we have nothing in the way of documents—only this picture, which doesn't connect him in the least manner with his father or his alleged father.

I believe this case has demonstrated the wisdom

of the Court in the case of *Suey Sei vs. Nagle*, 295 Fed 675, where the Court stated:

“Experience has demonstrated that testimony of the parties at interest as to the mere fact of relationship cannot be safely respected or relied upon.”

When we boil down the testimony of the plaintiff and his alleged father, we come to this. We have a statement, “This is my son”; “This is my father.” Hardly anything more. They have described some of the circumstances. However, generally speaking, they are in disagreement as to family [150] relationships where the mother died, where she was buried, the sleeping arrangements in the village, how large the village was, the residence in Quei Yung City—all these things they are in disagreement on, where there is no possible excuse.

Counsel presented two witnesses, So Tak and Chow Sam. So Tak was in China after the application had been made for the petitioner to come to the United States. He actually has not knowledge of the family. He was in Canton City, he saw him there. If we accept his testimony as true, he has added little to the case.

The testimony of Chow Sam is that of a party in interest. He also alleges to be the son of Chow Yit Quong and he must assume—we must assume he is under the control and has a self-interest in this matter. He has stated before the Court that neither himself nor his alleged brother, Chow Hing, resided with his father after the first couple of years in the United States. This does not tend to show the usual family relationship. If I have a son, I

will have him living at home. I won't have him go to a Chinese home or have him go live by himself in some strange place in San Francisco.

I submit, your Honor, that actually we have a total lack of substantive evidence—either documentary or by witness.

With the permission of the Court, I would like to stray for a moment from this particular case and show the general and usual pattern of fraud cases. The Immigration Service has [151] been dealing with this problem for many years. It is not one that is brought to the attention of the public. However, it is a known fact that the American, that is, we might say so-called Americans who go to China, purchase their wives, purchase sons or servants, and that those people are actually no more than slaves. Now that violates all our American ideas. It is against the principles of the United States to sell people, and yet that is what happens in China today. Now if a person will go to China and do such an act, his credibility as a witness in an American court certainly should be scrutinized very carefully. I don't say that the father went to China and purchased his second wife; if I ask him, he wouldn't admit it anyway.

However, experience has shown that the great portion of these cases, that is what happens. It is a barter and trade deal. An example is a witness in this case, So Tak. He went to China, made arrangements in a few days to have a wife. Generally they don't even see the woman before they marry her. A practical example of this very thing will be

brought to the attention of the Court in January when we have a case coming on for trial where a would-be husband sent the money to China to purchase a wife. He then purchased a record, a fraud record, to bring her over. That has cost that man a total of approximately \$12,000 and he still hasn't got his wife.

We have spoken of the large claim of nine sons and one [152] daughter. Many times I have heard it said, well, even if we said that the father has made a false claim, that doesn't mean that this boy, this particular plaintiff, is fraudulent. It's always this one that is good. Now I don't know if this man has nine sons. Personally I don't believe he has. However, how can the Government or the Court sort out the wheat from the chaff, tell which are good, which are bad? It is impossible. All the evidence is locked over in Red China behind the Iron Curtain. We can't investigate. The only thing we can do is question them when they come.

Returning to the evidence, the plaintiff must prove that he is not only the son of Chow Yit Quong but the legal blood son. So far, there is no documentary evidence whatsoever to show a marriage. Going back to the fundamentals, where is any proof of the marriage between the alleged father and mother? All we have is the statement that, "I went to China and got married." If he is not the legitimate son, then he would take the nationality of the mother and not the nationality of the father, or be a United States citizen.

Counsel made a number of statements regarding

the V.S.I. hearing. The Court will notice that in that hearing a specific request was made not only to the plaintiff but to his guardian for any documents, photographs, letters, anything they might have to substantiate their claim. They stated they didn't have any, and they specifically requested that the record be [153] submitted on the evidence they had presented, only their testimony. I might mention also that it seems strange that counsel would bring forward one brother but not the other. Where is Chow Hing?

In closing, I would like to thank the Court for its consideration. This is my first case, I know I have made numerous errors. However, the Court has been very patient. Thank you.

Mr. Hertogs: I will be rather brief on the closing argument, your Honor, but one of the first points I would like to cover is that quotation of Mr. Hargreaves concerning the presumptions. Now the presumptions, and all the court cases which have been cited there, arose out of the old Chinese Exclusion Act, and the old Chinese Exclusion Act specifically had a section in it which stated that the burden of proof was on any Chinese. All Chinese were to be presumed to be aliens until the contrary was shown. And that was originally brought out in the old case of Wong Kim Ark and a few of the other old cases; even though they resided in the United States for a considerable number of years, the burden of proof did not follow the ordinary burden of proof in a court in a legal matter, but followed according to the specific statute.

However, the Chinese Exclusion Acts were repealed in 1943. Naturally, until the Chinese Exclusion Acts were repealed in 1943, it was absolutely impossible for a United [154] States citizen, such as Chow Yit Quong in this particular case, to bring his wife to the United States. The laws of the United States at that time did not provide for the admission of the lawful spouses of the United States citizens who were of Chinese race. They were limited solely to the allocation of 100 a year, which was a very small number in comparison with the number of United States citizens who were residing in the United States.

It was not until an amendment was passed subsequent to the repeal of the Chinese Exclusion Acts in 1943 that the wives of United States citizens of Chinese ancestry were granted the right to bring their wives to the United States as non-quota immigrants, the same as those of any other nationality.

Now counsel has referred to this buying and selling of wives in China.

The Court: The law as it is now, under the present law, is that the guardian here, Chow Yit Quong, could bring his wife over?

Mr. Hertogs: Oh, yes, he is trying to, your Honor. We are just trying to get—we have a number of these cases. We are confronted with a rather difficult situation on these cases at the present time; the same as counsel has referred to in his argument. Any of these persons who were not successful in getting out from communist China prior to [155] its occupation in 1949 have had to secure exit per-

mits since that time in order to leave, and in order to secure permission to even leave that area and go to Hong Kong. Now it happens that in a number of cases, the Government has refused to issue such permits if the persons owned property in China and unless they would surrender that property and pay a large sum of money for the release of these individuals.

The Court: When did the statute become effective under which the——

Mr. Hertogs: 1946, your Honor—December of 1946. I think it was December 18th, wasn't it, 1946? I think it was that, December 18th, 1946. And since that time most of them have been bringing the wives, and I might state that there are any number of hundreds—I mean hundreds of these visa petitioners whose petitions have been approved by the Immigration and Naturalization Service that are awaiting for processing in the American Consulate in Hong Kong. I might state that from our own office we have had cases which were approved by the Immigration and Naturalization Service as early as April of 1952 and who have not even had an opportunity to secure documentation as of this date.

Now this buying and selling of wives in China has been going on, we admit, for a number of years; but it is not a question that is involved in this particular case—it is a practice which has been adopted, legally recognized over in [156] China for many, many hundreds of years. Centuries. They have found that it works out rather well. As a

matter of fact, they don't have that large divorce rate like we have here in the United States.

Now concerning the marriage of Chow Yit Quong, the question concerning the marriage would have been determined by the Immigration and Naturalization Service at the time of the admission of the two other boys in 1940. It must have been a determination at that time, and there was no question raised by the Board of Special Inquiry at that time. It certainly definitely was not raised by the Secretary of Labor on appeal, that Chow Yit Quong was legally married in China to a person named Wong Suey Hong and that those two boys were the lawful sons of that marriage.

The Court: Well, since this is a *de novo* proceeding, I suppose to be fair about it, the Court should not consider anything one way or another that was done by the administrative proceeding.

Mr. Hertogs: That is the view I was going to express just now, your Honor. I had some of my citations out here on that very particular thing. This is a hearing *de novo*.

The Court: In other words, the plaintiff coming in would have to make his proof and nothing that the immigration authorities did that was favorable to him would be admissible, any more than on behalf of the Government, anything that the [157] immigration officials did that was unfavorable to him should be admitted.

Mr. Hertogs: Other than in this particular case, you have the testimony of a prior landed son that his mother was so forth and so on, and that—the

stipulation of counsel that this boy was admitted to the United States as his lawful son.

The Court: The Court has to rule on that question on the record before the Court.

Mr. Hertogs: That is true. Now calling the Court's attention to the burden of proof, I cite the case of *ex parte Delaney*, which I know the Court is very familiar with, 77 Fed. Sup. 312 at page 322, which was affirmed by our Ninth Circuit, 170 Fed. 2nd 239. The Court stated in that case that the appellant had the duty of establishing the essential facts by a fair preponderance of the evidence. Likewise the Court of Appeals here for the Ninth Circuit stated in the case of *Gum Yu vs. Nagle*, 34 Fed. 2nd 848, at page 851:

“Questions in the cases of applicants who claim citizenship by reason of being sons or daughters of American citizens is a question of paternity.”

And the Court likewise stated in *Kwan Tung Jung vs. Bonham*, 119 Fed. 2nd 915, at 916:

“That relationship is the sole issue.” [158]

And there are many other cases which hold the same way, and the same view, that it is a question of paternity or the question of relationship.

Now in the *Gum Yu* case, Judge Wilbur, at page 852, stated:

“Relationship is not usually proven by physical facts and never is where the mother does not testify. But by pedigree, reputation in the family and by the conduct of the parties,

including the manner in which they lived, the fact that a small child lives in the home of its alleged parent and that they maintain towards each other the obligation involved in the relationship, is evidence favorable to the issue; and the evidence that they did not live together and did not conduct themselves as parent and child is evidence to the contrary.”

And he goes on and says:

“Such evidence is not collateral evidence; it is direct and material evidence on the issue.”

The Court of Appeals likewise for the Ninth Circuit stated in the case of *Lee Him vs. United States*, 74 Fed. 2nd 172, at page 173, citing another Circuit Court case:

“He took the stand and testified to his own belief concerning his place of birth. This evidence, of course, was hearsay; but nevertheless, it is the type of hearsay which is [159] admitted.”

And the same view was also expressed in the *De-laney* case and likewise in *United States vs. Wong Gung*, 70 Fed. 2nd 107.

The Court: Well, there isn't very much doubt as to the admissibility of evidence, but I don't think there is any judge in any Appellate Court any place whose words would mean very much to me on the question of the weight to be given to the testimony in cases of this kind, because I think no Appellate judge is competent to give any advice on that ques-

tion unless he comes down and hears some of these cases.

Mr. Hertogs: That is true, your Honor. That is solely a question for the trial judge, of the weight to be given the evidence.

The Court: That is a problem.

Mr. Hertogs: It is a difficult problem.

The Court: Mr. Hertogs, that is a problem that I don't think anybody in the Appellate Court has any realization of, or anyone in the Supreme Courts; and I don't think that when this statute was passed, it said that a child born abroad to an American father became an American citizen by birth, that Congress had any idea that under that statute and under 503 of the Nationality Act, that the courts were going to be confronted with these cases that are indigenous to the Chinese, to China. That is, cases that have a peculiar setting, as they have no place else.

Mr. Hertogs: Now, I have to state, however, the courts [160] have decided adversely to the Court's contention, but it may possibly be that Congress did not realize that there would be the number of cases involved.

The Court: Well, I think it is not only the number of cases involved, but I think that no legislator had the picture that is peculiar to these cases—I guess most of them are here on the west coast—that arise out of the circumstance of an American male citizen of Chinese ancestry, following the course of making these periodic trips back to China and propagating there, and then at a subsequent

time seem to bring in male children—mostly male children, although some female children—upon the theory that they are the legitimate offspring of American citizen fathers. And then to require the courts to evaluate the testimony, when it has none of the opportunities that are traditionally afforded to a trial court to properly appraise testimony. It is given—the testimony is given by every witness in one or another of the Chinese dialects, there are no cases in which there is anybody that speaks the English language or has any of the indicia of Americanism——

Mr. Hertogs: Well, you just haven't run across some, your Honor. I have plenty of them.

The Court: Well, that may be so. I haven't seen any of them.

Mr. Hertogs: You will have one next [161] week.

The Court: Well, maybe so, but where there is some opportunity to more adequately appraise the testimony, then the Court's problem isn't so great. But certainly in this case and in the case which I heard somewhat recently in which Mr. Gale was counsel, there just is no possibility of the Court using the judicial microscope at all, because there is nothing that the Court can see. I can't tell what witness is telling the truth, whether a witness is; although sometimes I can't tell that in cases where English is spoken. I am not meaning to imply that there is any God-like quality that the Court has that can always discern what is the truth or not, but all I am endeavoring to say is that there is

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great difficulty in trying to discern the truth under these circumstances.

Now I think that you are right, Mr. Hertogs, in saying that it is wholly a question of paternity, and the argument is sometimes made that, well, if the Court denies relief to the plaintiff, then it is determining that the child who here seeks declaration of citizenship is not the son of the man who claims that he is his son. And that the court is thereby making some sort of a Solomon-like judgment as to paternity, and that it denies relief, that it is breaking up the family, taking the father away from the son because of the requirements that the son has to be deported if he doesn't succeed in his declaration. I don't think that that is too correct an appraisal of the situation. All the Court can determine is [162] whether or not there is sufficient evidence presented to warrant the granting of relief, and it may well be that even if relief were denied, that the child is still the son of the father who claims it is his son. The difficulty of proof is not the court's making, nor is the difficulty of proof the result of anything, perhaps, that even the parties, or the plaintiff, is responsible for. It lies inherent in the peculiar circumstances surrounding the appropriation of the issue in these cases, for which no one can be responsible. You heard me ask a rather facetious question—well, why don't they marry some of these Chinese gals here, why do they have to go all the way back to China on these periodic visits? That is not their home, they

say it is not their home anymore. Their home is here in this country. Yet——

Mr. Hertogs: That is easy enough.

The Court: And they conduct themselves in the way that is normal—why don't they conduct themselves in that way, which we understand here in America, where we lay so much emphasis on the home as the unit of our system of society. This is a foreign ideology here that we are confronted with. It is a different kind of thing. We are not accustomed to it. The ordinary American citizen doesn't go over to Bulgaria or Rumania or Japan or China or Canada and pay periodic visits over there and appropriate—and then come back to this country and keep on making a business of doing that. That [163] is a foreign idea, it is not in accordance with our type of thinking. We just don't think that way over in this country and that is why it is very difficult, I think, for a judge to put a sort of stamp of approval on this sort of thing, to grind American citizens through the mill in that kind of a machinery. They don't think along those lines.

Mr. Hertogs: Well, I think the Court is misinformed there as to the reasons. I hate to take exception to the Court's statement——

The Court: You go ahead. Do as you mind. I am just very informally——

Mr. Hertogs: Well, I knew that.

The Court: ——discussing the case with you, and you don't have to be afraid about saying what are your views in the matter at all.

Mr. Hertogs: No. Well, I would say this, your

Honor. My views on this proposition do not agree with the Court's. I think the family to the Chinese is considerably more important, and a home to the Chinese is considerably more important than they are to the ordinary American citizen. Now the Court wonders why it is necessary for them to go to China. If the Court would look back over the picture, going way back to 1880 at about that time, at which time the railroads brought to the United States thousands and thousands of Chinese laborers to the United States, they were all of male [164] sex. Then the Chinese Exclusion Laws became effective in 1882. That barred from admission to the United States those of Chinese race. Subsequent to that time they were supposed to have been born in the United States, and I use the words "supposed to have been born in the United States." I don't know how many thousands of male persons, and the records of the Immigration and Naturalization Service clearly indicate that there was such a small number of Chinese women in the United States before 1900, that it would have been a physical impossibility for more than possibly five per cent, maybe possibly ten per cent of these individuals to have been actually physically born within the United States.

Now up until very recently, and the overruling by the Supreme Court of these laws, you had laws, not only in California but practically all of the other states against miscegenous marriages. Now you had all these males in the United States. You did finally secure, up to 1924—before 1924, for a

number of years in there, a very limited number of years, I might state, it was possible if a Chinese had certain qualifications, that he could bring his wife to the United States. That was under a treaty of trade and commerce that we had between China and the United States, which provided that they could bring their families to the United States. And those who were engaged in foreign trade between the United States and China, and that is most of their import and export [165] business was from China, it was possible for them to meet those certain qualifications and they did bring their families to the United States and they did have children born in the United States. But that was a very, very small percentage, to the actual number of Chinese that we have had living in the United States. I would say it would be about one per cent. It might not even run as high as one per cent. Then we still have all of those males in the United States.

Now it was not until 1946 that they were able to bring the wives to the United States and establish their home in the United States, as we would, being American citizens.

The Court: Well, but, Mr. Hertogs, that was not precisely what I meant. Let's take the guardian here, Chow Yit Quong. Now he is an American citizen. He lives in the United States. He makes his living in the United States. He has, presumably, his home in the United States. All I have intended to point out to you was that it is foreign to the American idea that this man should make trips to China and beget children there when he is an Amer-

ican citizen living in the United States, if he claims the benefit of that American citizenship. Now if he is still Chinese and he still considers himself not an American citizen and a Chinese, then it is understandable why he should go back there. But otherwise, to me there is no justification for that under any circumstances, not if you want to be an American citizen. Now maybe I have got too high an ideal set [166] for myself in that regard, or perhaps I am trying to set too high an ideal.

Mr. Hertogs: I think——

The Court: That produces the great difficulty we have in these particular cases.

Mr. Hertogs: And which you won't have in five years from now.

The Court: It may be. We may not have them. When the time comes when the family life is maintained in the United States for the people of Chinese ancestry, we may—all these problems may be eliminated. But as they stand now, we have the situation where there is a man who claims American citizenship, he lives in the United States, he makes his living here, but he goes abroad to produce children. Why? He doesn't go abroad to make his home abroad; he goes abroad for the purpose of, as the witnesses have testified in this and other cases, resting and what was the other word? I may have a note of it. Rest and——

Mr. Hertogs: Visit the family.

The Court: Rest and visit. Now that is his purpose in going abroad. Not in connection with anything else. If he claims still to be an American

citizen. Now when offspring are produced under those circumstances, I believe that under the statute, the proof should be scrutinized with great care to see whether or not there is in reality the true evidence of [167] paternity. Now, unfortunately in this court I think the judges can't help being extremely cautious about these matters, because I think I mentioned it before here, you had a number of cases presented to the Court involving fraud in connection with Chinese paternity. I use the word "Chinese"; I mean those who are of Chinese ancestry. Therefore, with the language barrier, with the different types of thinking that is involved and with this background of other cases, I think the attorney who presents these cases must expect that the Court is going to proceed with great caution. I won't make a rubber stamp of myself simply because some words come out in a foreign language from a witness' mouth and I say that is sufficient and I stamp my name down and make him an American citizen. Maybe some other judge might feel that it is all right to do that, but I find it very difficult in view of the experience the Court has had in these matters and in view of the other circumstances which I have just mentioned. It presents a problem of great difficulty.

Now, Mr. Hertogs, my feeling in the matter is, and it is just a sort of an intuitive feeling—I'm inclined to think that maybe this boy is the son.

Mr. Hertogs: I am sure of it, your Honor.

The Court: But I am not so sure about the evidence in connection with the matter, and I am not

here to guess and conjecture. It may be that he is. There is some slight resemblance. But I don't profess to be an authority on that, [168] and I can't tell. If it were the case of persons who spoke the English language and they were situated as these two were, and I had them up here and I had a chance to converse with them together and the three of us were talking together, then the relationship might become more evident. But there is great difficulty in that.

Mr. Hertogs: Well, I might state this, your Honor: Two things have appeared that I want to answer. First, the Court wonders why they go to China. I think that is the main thing—why. I think a study of the Chinese race would indicate the family is one of the most important things that they have, and I think our interpreter here and the official Government interpreter will probably agree with me on that. Now, why is it necessary for them to go to China? The reason that it was necessary for them to go to China is the fact they can't find a woman in the United States to marry. And they can't bring the woman in China to the United States, and naturally she must remain in China and they are confronted with that problem. Yet they must have a family, according to Chinese custom. And what has caused some of this in the past is the fact that it is very bad for a Chinese not to have a son. Ordinarily that is where we are confronted with a number of problems in these cases. Chinese custom requires them to have a son. If they don't have a son, they get a son.

The Court: Somehow. [169]

Mr. Hertogs: They get a son one way or the other, and he put in the family and he takes his position in the family as if he were a legitimate son, because that is one of the most important things in their way of life. And I think it is true likewise with the American people. I think we are becoming more of a family here in the United States. I have noticed that here recently—not referring to myself, but I think the families are getting a little larger. I just had a new addition, our fifth son. No daughters, either. And I think the families here are getting larger at the present time, and I think it is held true in China over a number of years. And I might state in this particular case, I still feel that I am satisfied, myself, personally, that this is a bona fide father and son relationship.

The Court: Well, I will take the case under advisement. You didn't intend to have the record typed in this case, did you?

Mr. Hargreaves: I had no intention of doing it, sir, unless you request it, your Honor.

The Court: Well, I think I have got a pretty clear recollection of the testimony in the matter. It is more of a fundamental problem of the nature and weight of the evidence, more than anything else.

Mr. Hertogs: Yes.

The Court: And I wish that someone with more qualifications [170] than some of the judges here, were able to fathom out these things. It is rather difficult.

I will mark this case submitted. I have another case that is generally similar, although, of course, the facts are not the same, and that is the case that Mr. Gale had, and I have that under submission. I will try to decide both cases reasonably soon.

Mr. Hertogs: Thank you, your Honor.

Mr. Hargreaves: Thank you, your Honor.

[Endorsed]: Filed March 10, 1953. [171]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the respective parties:

Petition for declaratory judgment.

Answer.

Order substituting James P. McGranery as party defendant.

Interrogatories to adverse party.

Answers to certain interrogatories filed November 26, 1952.

Answers to certain interrogatories filed December 5, 1952.

Order for judgment in favor of defendant.

Order substituting Herbert Brownell, Jr., as party defendant.

Findings of fact and conclusions of law.

Judgment.

Notice of appeal.

Appellant's designation of record on appeal.

Appellee's designation of record on appeal.

Reporter's transcript of December 8, 9, 1952.

Petitioner's Exhibits 1 to 8.

Defendant's Exhibits A, B and C.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 10th day of March, 1953.

[Seal]

C. W. CALBREATH,
Clerk;

By /s/ C. M. TAYLOR,
Deputy Clerk.

[Title of District Court and Cause.]

AMENDED NOTICE OF APPEAL

Notice is hereby given this 26th day of March, 1953, that Chow Sing, by and through his Guardian ad Litem, Chow Yit Quong, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of this Court entered on the 17th day of February, 1953, in favor

of the defendant and against the said Chow Sing, by his guardian ad litem, Chow Yit Quong, plaintiff.

JACKSON & HERTOGS,
Attorneys for Plaintiff;

By /s/ JOSEPH S. HERTOGS.

[Endorsed]: Filed March 26, 1953.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Whereas, the above-named Appellant has appealed to the United States Court of Appeals for the Ninth Circuit from the Judgment entered against him in said action, in the United States District Court, in and for the Northern District of California, Southern Division.

Now, Therefore, in consideration of the premises, and of such appeal, the undersigned, Maryland Casualty Company, a corporation duly organized and existing under the laws of the State of Maryland, and duly authorized to transact a general surety business in the State of California, does undertake and promise on the part of the appellant, to secure the payment of costs if the appeal is dismissed, or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, not exceeding the sum of Two Hundred Fifty Dollars (\$250.00), to which amount it acknowledges itself bound.

It is expressly agreed by the Surety that in case of a breach of any condition hereof, the above-

entitled Court may, upon notice to the Surety of not less than ten (10) days proceed summarily in the above-entitled action in which this bond is given, to ascertain the amount which the Surety is bound to pay on account of such breach and render judgment therefor against the Surety and award execution therefor, all as provided by and in accordance with the intent and meaning of rule 34 of the Rule of Practice of the United States District Court in and for the Northern District of California.

In Witness Whereof, the corporate seal and name of the said Surety Company is hereto affixed and attested at San Francisco, California, by its duly authorized officer, this 2nd day of March, 1953.

[Seal] MARYLAND CASUALTY
COMPANY,

By /s/ ARTHUR J. CLEMENT, JR.,
Attorney-in-Fact.

The Premium on This Bond Is \$10.00 Per Annum.

[Endorsed]: Filed March 26, 1953.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO SUPPLEMENTAL TRANSCRIPT OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing documents, listed below, are the originals filed in the

above-entitled case, and that they constitute a part of the record on appeal herein:

Amended notice of appeal, filed March 26, 1953.

Cost bond on appeal, filed March 26, 1953.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 27th day of March, 1953.

[Seal] C. W. CALBREATH,
Clerk;

By /s/ C. M. TAYLOR,
Deputy Clerk.

[Endorsed]: No. 13746. United States Court of Appeals for the Ninth Circuit. Chow Sing, by His Guardian ad Litem, Chow Yit Quong, Appellant, vs. Herbert Brownell, Jr., Attorney General of the United States, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed March 10, 1953.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13746

CHOW YIT QUONG, Guardian ad Litem, for
CHOW SING,

Appellant,

vs.

HERBERT BROWNELL, JR., Attorney General
of the United States,

Appellee.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY IN THE
APPEAL OF THE ABOVE-ENTITLED
MATTER

Comes Now Chow Yit Quong, Guardian ad Litem
for Chow Sing, by and through his attorney, Joseph
S. Hertogs, and files herein the Statement of Points
on which appellant intends to rely in the appeal of
the above-entitled matter:

I.

That the Findings of the District Court are
clearly erroneous.

II.

That the findings, conclusions and judgment of
the District Court are unsupported by the evidence
of record.

III.

That the findings, conclusion and judgment of the
District Court are contrary to the evidence of rec-
ord.

IV.

That the District Court erred in finding that the plaintiff-appellant did not have a claim to permanent residence within the Northern District of California or in the United States of America.

V.

That the District Court erred in concluding that the plaintiff-appellant, Chow Sing, is not a United States citizen.

/s/ JOSEPH S. HERTOGS,
Attorney for Appellant.

[Endorsed]: Filed March 20, 1953.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD TO BE INCORPORATED IN TRANSCRIPT ON APPEAL

Chow Yit Quong, guardian ad Litem for Chow Sing, appellant in the above-entitled matter, by and through his attorney, Joseph S. Hertogs (in accordance with Rule 75(a) of the Federal Rules of Civil Procedure), hereby designates the following to be included in the transcript on the pending appeal from a judgment made, filed and entered in said matter on February 18, 1953:

1. Petition for Declaratory Judgment under Section 503 of the Nationality Act of 1940.
2. Defendant's answer.

3. Interrogatories to Adverse Party filed November 12, 1952.
4. Answers to Interrogatories filed November 26, 1952, and December 5, 1952.
5. Order for Judgment.
6. Findings of Fact and Conclusions of Law.
7. Judgment.
8. Order Substituting Party Defendant.
9. Reporter's transcript of December 8 and December 9, 1952.
10. Notice of Appeal.
11. Stipulation and order that exhibits may be considered in their original form without printing.
12. Statements of points on which appellant intends to rely on appeal in the above-entitled matter.
13. This designation.

/s/ JOSEPH S. HERTOGS,
Attorney for Appellant.

[Endorsed]: Filed March 20, 1953.

[Title of Court of Appeals and Cause.]

STIPULATION AND ORDER

It is hereby stipulated by and between counsel for appellant and counsel for appellee that all exhibits introduced at the time of trial of the above-entitled matter may be considered in their original form without printing.

/s/ JOSEPH S. HERTOGS,
Attorney for Appellant.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney;

/s/ CHARLES ELMER COLLETT,
Assistant U. S. Attorney,
Attorneys for Appellee.

/s/ WILLIAM DENMAN,

/s/ WM. HEALY,

/s/ HOMER BONE,

Judges of the United States Court of Appeals for
the Ninth Circuit.

[Endorsed]: Filed March 23, 1953.